SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 10, Original.

THE STATE OF SOUTH DAKOTA, COMPLAINANT,

vs.

CHARLES B. COLLINS.

IN EQUITY.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 8, 1918.

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1 At the Capitol of the United States, in the City of Washington and the District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the thirteenth day of the same month) in the year of our Lord one thousand nine hundred and thirteen, and of the Independence of the United States the one hundred and thirty-eight, the Supreme Court of the United States met agreeably to law.

2 And afterwards, towit, on the 31st day of January, A. D. 1916, the following entry appears of record, viz:

—, Original.

THE STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS.

Mr. Thomas Sterling in behalf of counsel for the complainant, submitted to the consideration of the Court a motion for leave to file a bill of complaint in this cause.

January 31, 1916.

Which said motion is in the words and figures following, viz:

3 In the Supreme Court of the United States, October Term, A. D., 1915.

In Equity. No. — .

THE STATE OF SOUTH DAKOTA, Plaintiff,

vs.

CHARLES B. COLLINS, Defendant.

Motion for Leave to File Bill of Complaint.

Comes now the plaintiff in the above entitled action, the State of South Dakota, and moves the Court for leave to file said Bill of Complaint, and to bring and maintain this suit originally in this Honorable Court, and that a writ of subpœna issue to the defendant herein, for the reason that this is an action by one of the United States, to-wit: The State of South Dakota, against a citizen of the State of California, and for the grounds of said motion the Plaintiff respectfully refers the Court to the allegations of the Bill of Complaint hereto annexed and made a part of this motion.

CLARENCE C. CALDWELL,
Attorney General for the State of South Dakota.

And afterwards, to-wit, on the 21st day of February, A. D. 1916, the following entry appears of record, viz:

4 Supreme Court of the United States, October Term, 1915.

No. —, Original.

THE STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS.

On Consideration on the motion for leave to file a bill of complaint herein.

It is now here Ordered by the Court that the said motion be, and the same is hereby, granted and that process issue against the defendant returnable on the second Monday of October next.

February 21, 1916.

[Endorsed:] Supreme Court of the United States, October Term, 1915. Term No. —, Orig. South Dakota vs. Collins. Order granting leave to file Bill of Complaint. Filed Feb. 21, 1916.

And afterwards, to-wit, on the 6th day of March, A. D. 1916, the Bill of Complaint was filed in words and figures following, viz.

5 In the Supreme Court of the United States.

October Term A. D. 1915.

In Equity, No. —.

THE STATE OF SOUTH DAKOTA, Plaintiff,

vs.

CHARLES B. COLLINS, Defendant.

Bill of Complaint.

To the Honorable, the Justice of the Supreme Court of the United States:

The State of South Dakota in its sovereign capacity, as one of the United States of America, by and under the direction of his Excellency, Frank M. Byrne, as Governor of said State, and by its Attorney General, brings this bill in equity against the defendant, Charles B. Collins, a resident and citizen of the State of California, and thereupon alleges:

6 *Count One.*

I.

That the plaintiff is one of the United States of America, and the defendant is and for more than five years past has been a resident and citizen of the United States and of the State of California, and is not a resident or citizen of the State of South Dakota.

II.

That at the regular biennial election held in said State of South Dakota on the 4th. day of November A. D., 1902, the defendant was chosen by the qualified electors of said State as Treasurer thereof, and thereafter, on the 6th. day of January A. D., 1903, he took an oath to support the Constitution of the United States and of the State of South Dakota, and faithfully to discharge the duties of said office of Treasurer, before one of the Judges of the Supreme Court of said State, and caused to be filed and recorded in the office of the Secretary of State, his official bond as such State Treasurer in the sum of Two Hundred fifty thousand dollars ($250,000.00), signed by the defendant as principal and thirty-nine others as sureties in and by which bond the defendant and said thirty-nine others became held and firmly bound unto the State of South Dakota in the sum of Two hundred fifty thousand dollars ($250,000.00) good and lawful money of the United States of America to be paid to the State of South Dakota, and for which payment well and truly to be
7 made, the defendant and his said sureties bound themselves, their heirs, executors, administrators and assigns, jointly and severally, upon the following conditions written in said bond:

"Whereas, the above bounden, C. B. Collins, has been elected to the office of Treasurer of the State of South Dakota, at the general election in and for the State of South Dakota, on the 4th day of November, A. D., 1902.

Now, Therefore, the conditions of the above obligation are such that if the said C. B. Collins shall well and faithfully perform the duties of said office of Treasurer of the State of South Dakota, and shall cause the faithful performance of all persons appointed or employed by him in his office, of their duties and trust therein, and that he shall deliver to his successor in office or any person authorized by law to receive the same, all moneys, books, records, papers and other articles and effects belonging to his said office, then the above obligation to be void, otherwise, to remain in full force and effect."

That said bond was duly signed, sealed and delivered by the defendant and said thirty-nine others to the State of South Dakota, and was on the 5th day of January, 1903, duly approved as the official bond of the defendant as such State Treasurer by the Governor, Presiding Judge of the Supreme Court and Attorney General of said State, and thereupon on said date, the defendant assumed and

entered upon the discharge of the duties of said office and continued to discharge the same and to enjoy the benefits and emolu-
8 ments of said office, throughout the official term of two years thereafter.

III.

That by virtue of his election to said office of Treasurer, and by entering upon, assuming and discharging the duties thereof, it became and was the duty of the defendant, during his said term of office to, and he agreed with the plaintiff that he would, receive and have charge of, and safely keep, all of the public moneys received by him, or which should be and was paid in to the state treasury of said state; keep an accurate account of the receipts and disbursements of the treasury in books provided for that purpose at the expense of the State, in which he should specify the names of the persons from whom he received, and to whom he paid out the same; and on what account the same was received or paid out, and the time of such receipt and payment, and submit a report to the Governor of said State, on or before the fifteenth day of November of each year, showing a full and true exhibit of the state of the public accounts and funds received, and paid during the preceding fiscal year ending June thirtieth of said year, and the balance remaining in the treasury; that for his services as such Treasurer the defendant should have received, and did receive, from the plaintiff, an annual salary of eighteen hundred dollars, ($1,800.00), and he was not entitled to receive any fees or perquisites or other remuneration for the
9 performance of any duties connected with said office, nor make any profit directly or indirectly out of the money of said State, or by using the same for any purpose not authorized by law.

IV.

That in the month of January, 1903, after the defendant assumed and entered upon the discharge of his duties as such State Treasurer, there came into his hands as such Treasurer, public money of the State of South Dakota, amounting to the sum of Six hundred forty-eight thousand, two hundred thirty-three dollars and eighty-six cents ($648,233.86), and at various times thereafter he received additional sums of public moneys belonging to the plaintiff, which moneys from time to time during his said term of office, the defendant deposited in open accounts, and in sums of which he received certificates of deposit in the several banks hereinafter named in the State of South Dakota, and elsewhere, subject at all times to check or withdrawal by the defendant, and at the close of the last business day in each month during his said term of office he had on deposit in said banks as Treasurer of said State, of the public moneys so received by him, balances as follows:

Statement of Bank Accounts.

At close of business January 21, 1903.

Illinois Trust & Savings Bank, Chicago	$318,452.64
First National Bank, Pierre, S. D.	138,184.98
Pierre National Bank, Pierre, S. D.	28,466.15
National Bank of Commerce, Pierre, S. D.	85,266.44
First National Bank, Deadwood, S. D.	26,452.00
American National Bank, Deadwood, S. D.	26,450.63

Regents' Account.

Illinois Trust & Savings Bank, Chicago	17,267.32
First National Bank, Brookings, S. D.	1,116.24
Bank of Brookings, Brookings, S. D.	1,577.46

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Certificate Account.

Exchange State Bank, Menno, S. D.	5,000.00
	$648,233.86

At close of business February 28, 1903.

Illinois Trust & Savings Bank, Chicago	$42,835.09
First National Bank, Pierre, S. D.	65,290.98
Pierre National Bank, Pierre, S. D.	28,466.15
National Bank of Commerce, Pierre, S. D.	35,266.44
American National Bank, Deadwood, S. D.	26,450.63
First National Bank, Aberdeen, S. D.	50,000.00
Aberdeen National Bank, Aberdeen, S. D.	50,000.00

Regents' Account.

Illinois Trust & Savings Bank, Chicago	13,600.80
First National Bank, Brookings, S. D.	1,116.24
Bank of Brookings, Brookings, S. D.	1,577.46

Certificate Account.

Exchange State Bank, Menno, S. D.	5,000.00
	$349,603.79

At close of business March 31, 1903.

Illinois Trust & Savings Bank, Chicago	$372,985.20
Central Trust Company, Chicago	176,094.21
First National Bank, Pierre, S. D.	88,301.32
Pierre National Bank, Pierre, S. D.	28,466.15
National Bank of Commerce, Pierre, S. D.	35,266.44
American National Bank, Deadwood, S. D.	26,450.63
First National Bank, Aberdeen, S. D.	50,000.00
Aberdeen National Bank, Aberdeen, S. D.	99,216.82

Regents' Account.

Illinois Trust & Savings Bank, Chicago	9,982.50
First National Bank, Brookings, S. D.	1,116.24
Bank of Brookings, Brookings, S. D.	1,577.46

Certificate Account.

Exchange State Bank, Menno, S. D.	5,000.00
	$894,456.97

At close of business April 30, 1903.

Central Trust Company, Chicago	$200,812.44
Illinois Trust & Savings Bank, Chicago	192,049.38
First National Bank, Pierre, S. D.	100,429.96
Pierre National Bank, Pierre, S. D.	28,466.15

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National Bank of Commerce, Pierre, S. D.	38,461.67
American National Bank, Deadwood, S. D.	26,450.58
First National Bank, Aberdeen, S. D.	50,000.00
Aberdeen National Bank, Aberdeen, S. D.	99,216.82

Regents' Account.

Illinois Trust & Savings Bank, Chicago	10,263.51
First National Bank, Brookings, S. D.	1,116.24
Bank of Brookings, Brookings, S. D.	1,577.46

Certificate Account.

Exchange State Bank, Menno, S. D.	5,000.00
German Bank, Eureka, S. D.	10,000.00
First National Bank, Mitchell, S. D.	10,000.00
Minnehaha National Bank, Sioux Falls, S. D.	10,000.00
Sioux Falls National Bank, Sioux Falls, S. D.	10,000.00
	$793,844.21

At close of business May 31, 1903.

Central Trust Company, Chicago	$200,812.44
Illinois Trust & Savings Bank, Chicago	55,030.37
First National Bank, Pierre, S. D.	101,823.64
Pierre National Bank, Pierre, S. D.	28,460.27
National Bank of Commerce, Pierre, S. D.	38,461.67
American National Bank, Deadwood, S. D.	26,450.58
First National Bank, Aberdeen, S. D.	50,000.00
Aberdeen National Bank, Aberdeen, S. D.	99,221.97
Security Bank, Clark, S. D.	15,000.00

Regents' Account.

Illinois Trust & Savings Bank, Chicago	6,688.41
First National Bank, Brookings, S. D.	1,116.24
Bank of Brookings, Brookings, S. D.	1,577.46

Certificate Account.

Exchange State Bank, Menno, S. D.	5,000.00
Minnehaha National Bank, Sioux Falls, S. D.	10,000.00
Sioux Falls National Bank, Sioux Falls, S. D.	10,000.00
First National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	10,000.00
Hot Springs National Bank, Hot Springs, S. D.	2,000.00
	$671,643.05

At close of business June 30, 1903.

Illinois Trust & Savings Bank, Chicago	$64,396.61
Central Trust Company, Chicago	50,812.44
First National Bank, Pierre, S. D.	55,349.58

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Pierre National Bank, Pierre, S. D.	13,660.58
National Bank of Commerce, Pierre, S. D.	20,500.52
Security Bank, Clark, S. D.	9,785.75
First National Bank, Aberdeen, S. D.	50,000.00
Aberdeen National Bank, Aberdeen, S. D.	105,725.89
American National Bank, Deadwood, S. D.	14,507.28

Regents' Account.

Illinois Trust & Savings Bank, Chicago	3,388.46
First National Bank, Brookings, S. D.	1,116.24
Bank of Brookings, Brookings, S. D.	1,577.46

Certificate Account.

Exchange State Bank, Menno, S. D.	5,000.00
Minnehaha National Bank, Sioux Falls, S. D.	10,000.00
Sioux Falls National Bank, Sioux Falls, S. D.	10,000.00
First National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	10,000.00
Hot Springs National Bank, Hot Springs, S. D.	2,000.00
	$437,820.81

At close of business July 31, 1903.

Illinois Trust & Savings Bank, Chicago	$793.25
Central Trust Company, Chicago	21,083.92
First National Bank, Pierre, S. D.	23,110.28
Pierre National Bank, Pierre, S. D.	337.42
National Bank of Commerce, Pierre, S. D.	4,114.14
First National Bank, Aberdeen, S. D.	30,000.00
Aberdeen National Bank, Aberdeen, S. D.	56,025.89
Security Bank, Clark, S. D.	5,424.50

Regents' Account.

Illinois Trust & Savings Bank, Chicago	27,693.03
First National Bank, Brookings, S. D.	1,116.24
Bank of Brookings, Brookings, S. D.	1,577.46

Certificate Account.

Hot Springs National Bank, Hot Springs, S. D.....	2,000.00
	$173,276.13

At close of business August 31, 1903.

Illinois Trust & Savings Bank, Chicago.....	$346.60
Central Trust Company, Chicago.....	23,954.17
First National Bank, Pierre, S. D.....	26,166.48
Pierre National Bank, Pierre, S. D.....	48.17
National Bank of Commerce, S. D.....	1,964.26

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First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.....	26,105.89

Regents' Account.

Illinois Trust & Savings Bank, Chicago.....	25,565.91
First National Bank, Brookings, S. D.....	1,116.24
Bank of Brookings, Brookings, S. D.....	1,577.46
	$131,845.18

At close of business September 30, 1903.

Illinois Trust & Savings Bank, Chicago.....	$346.60
Central Trust Company, Chicago.....	80,052.23
First National Bank, Pierre, S. D.....	49,073.12
Pierre National Bank, Pierre, S. D.....	5,759.00
National Bank of Commerce, Pierre, S. D.....	6,193.59
First National Bank, Aberdeen, S. D.....	25,000.00
Aberdeen National Bank, Aberdeen, S. D.....	29,308.77

Regents' Account.

Illinois Trust & Savings Bank, Chicago.....	23,823.25
First National Bank, Brookings, S. D.....	1,000.00
Bank of Brookings, Brookings, S. D.....	1,000.00
	$221,556.56

At close of business October 31, 1903.

Central Trust Company, Chicago.....	$62,788.36
Illinois Trust & Savings Bank, Chicago.....	346.60
First National Bank, Pierre, S. D.....	51,954.19
Pierre National Bank, Pierre, S. D.....	5,669.28
National Bank of Commerce, Pierre, S. D.....	6,127.29
First National Bank, Aberdeen, S. D.....	25,000.00
Aberdeen National Bank, Aberdeen, S. D.....	30,161.77

Regents' Account.

Illinois Trust & Savings Bank, Chicago.....	24,198.15
First National Bank, Brookings, S. D.....	1,000.00
Bank of Brookings, Brookings, S. D.....	1,000.00
	$208,245.64

At close of business November 30, 1903.

Central Trust Company, Chicago	$39,656.70
First National Bank, Pierre, S. D.	55,667.48
Pierre National Bank, Pierre, S. D.	5,669.28
National Bank of Commerce, Pierre, S. D.	6,057.04
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,201.77

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Regents' Account.

Illinois Trust & Savings Bank, Chicago	20,603.17
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00
	$184,855.44

At close of business December 31, 1903.

Central Trust Company, Chicago	$24,389.07
First National Bank, Pierre, S. D.	53,930.63
Pierre National Bank, Pierre, S. D.	6,102.60
National Bank of Commerce, Pierre, S. D.	7,147.51
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	31,418.39

Regents' Account.

Illinois Trust & Savings Bank, Chicago	17,266.70
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00
	$167,254.90

At close of business January 31, 1904.

Central Trust Company, Chicago	$82,263.39
First National Bank, Pierre, S. D.	57,025.90
Pierre National Bank, Pierre, S. D.	6,867.60
National Bank of Commerce, Pierre, S. D.	8,828.49
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	33,678.39

Regents' Account.

Illinois Trust & Savings Bank, Chicago	17,721.48
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00
	$233,385.25

At close of business February 28, 1904.

Central Trust Company, Chicago	$16,862.84
First National Bank, Pierre, S. D.	59,802.66
Pierre National Bank, Pierre, S. D.	5,613.57

National Bank of Commerce, Pierre, S. D.	8,317.79
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	34,333.04

Regents' Account.

Illinois Trust & Savings Bank, Chicago	13,974.51
First National Bank, Brookings, S. D.	1,000.00

Bank of Brookings, Brookings, S. D. 1,000.00

$165,904.41

At close of business March 31, 1904.

Central Trust Company, Chicago	$449,786.59
First National Bank, Pierre, S. D.	62,359.11
Pierre National Bank, Pierre, S. D.	11,700.88
National Bank of Commerce, Pierre, S. D.	15,295.53
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	41,962.93
American National Bank, Deadwood, S. D.	28,731.29

Regents' Account.

Illinois Trust & Savings Bank, Chicago	10,455.20
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00

$657,291.53

At close of business April 30, 1904.

Central Trust Company, Chicago	$318,479.11
First National Bank, Pierre, S. D.	64,770.18
Pierre National Bank, Pierre, S. D.	16,827.68
National Bank of Commerce, Pierre, S. D.	12,953.28
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	34,537.47
American National Bank, Deadwood, S. D.	19,602.87

Regents' Account.

Illinois Trust & Savings Bank, Chicago	10,713.71
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Mitchell National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	5,000.00

Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Company, Groton, S. D.	2,000.00
	$523,884.30

At close of business May 31, 1904.

Central Trust Company, Chicago	$258,473.40
First National Bank, Pierre, S. D.	66,721.07

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Pierre National Bank, Pierre, S. D.	14,166.47
National Bank of Commerce, Pierre, S. D.	12,367.82
Security Bank, Clark, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	34,372.67
American National Bank, Deadwood, S. D.	3,430.09

Regents' Account.

Illinois Trust & Savings Bank, Chicago	7,157.93
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
	$457,689.45

At close of business June 30, 1904.

Central Trust Company, Chicago	$165,054.20
First National Bank, Pierre, S. D.	51,018.18
Pierre National Bank, Pierre, S. D.	11,591.32
National Bank of Commerce, Pierre, S. D.	12,445.78
Security Bank, Clark, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	34,881.92
American National Bank, Deadwood, S. D.	4,540.34

Regents' Account.

Illinois Trust & Savings Bank, Chicago	3,227.80
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	5,000.00

Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Groton, Groton, S. D.	2,000.00
	$343,759.54

At close of business July 31, 1904.

Central Trust Company, Chicago	$46,161.61
First National Bank, Pierre, S. D.	44,706.00
Pierre National Bank, Pierre, S. D.	9,654.78
National Bank of Commerce, Pierre, S. D.	12,023.82

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American National Bank, Deadwood, S. D.	1,772.04
Aberdeen National Bank, Aberdeen, S. D.	35,061.92
First National Bank, Aberdeen, S. D.	25,000.00
Security Bank, Clark, S. D.	15,000.00

Regents' Account.

Illinois Trust & Savings Bank, Chicago	28,783.76
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

German Bank, Eureka, S. D.	5,000.00
First National Bank, Mitchell, S. D.	10,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Groton, Groton, S. D.	2,000.00
	$239,163.93

At close of business August 31, 1904.

Central Trust Company, Chicago	$54,890.60
First National Bank, Pierre, S. D.	44,922.78
Pierre National Bank, Pierre, S. D.	9,654.78
National Bank of Commerce, Pierre, S. D.	12,023.82
American National Bank, Deadwood, S. D.	1,772.04
Aberdeen National Bank, Aberdeen, S. D.	36,716.65
First National Bank, Aberdeen, S. D.	25,000.00
Security Bank, Clark, S. D.	3,000.00

Regents' Account.

Illinois Trust & Savings Bank, Chicago	26,415.22
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

German Bank, Eureka, S. D.	5,000.00
First National Bank, Mitchell, S. D.	10,000.00

Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Groton, Groton, S. D.	2,000.00
	$235,395.89

At close of business September 30, 1904.

Central Trust Company, Chicago	$124,646.91
First National Bank, Pierre, S. D.	54,841.46
Pierre National Bank, Pierre, S. D.	13,213.55
National Bank of Commerce, Pierre, S. D.	15,212.21
Aberdeen National Bank, Aberdeen, S. D.	37,918.61
First National Bank, Aberdeen, S. D.	25,000.00

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American National Bank, Deadwood, S. D.	4,673.54
Security Bank, Clark, S. D.	3,000.00

Regents' Account.

Illinois Trust & Savings Bank, Chicago	24,104.13
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
German Bank, Eureka, S. D.	5,000.00
	$323,610.41

At close of business October 31, 1904.

Central Trust Company, Chicago	$134,620.24
First National Bank, Pierre, S. D.	55,372.62
Pierre National Bank, Pierre, S. D.	13,213.55
National Bank of Commerce, Pierre, S. D.	15,212.21
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	31,018.61
American National Bank, Deadwood, S. D.	4,673.54

Regents' Account.

Illinois Trust & Savings Bank, Chicago	23,685.93
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
	$323,796.70

At close of business November 30, 1904.

Central Trust Company, Chicago	$133,077.05
First National Bank, Pierre, S. D.	57,302.50
Pierre National Bank, Pierre, S. D.	13,213.55
National Bank of Commerce, Pierre, S. D.	15,212.21
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	31,018.61
American National Bank, Deadwood, S. D.	4,673.54

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Regents' account.

Illinois Trust and Savings Bank, Chicago	19,898.62
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

German Bank, Eureka, S. D.	5,000.00
First National Bank, Mitchell, S. D.	10,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Groton, Groton, S. D.	2,000.00
	$320,396.08

At close of business December 31, 1904.

Central Trust Company, Chicago	$312,849.55
First National Bank, Pierre, S. D.	63,763.50
Pierre National Bank, Pierre, S. D.	14,511.48
National Bank of Commerce, Pierre, S. D.	21,015.52
Aberdeen National Bank, Aberdeen, S. D.	30,512.54
First National Bank, Aberdeen, S. D.	25,000.00
American National Bank, Deadwood, S. D.	9,112.20

Regents' Account.

Illinois Trust & Savings Bank, Chicago	15,648.62
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
	$513,413.41

V.

That at various times during his said term of office, in manner and form unknown to the plaintiff, the defendant collected and received from said banks and other persons and corporations, to

plaintiff unknown, and, in violation of his agreement with the State when he entered upon the discharge of the duties of said office, he wrongfully kept and retained various sums of money and the
20 equivalent thereof, as fees and perquisites in connection of the deposit of said sums of money in said banks, as interest or profit for permitting the use thereof by said banks, while, and as such Treasurer, in consideration of the deposit of said money by him with said banks, and the use thereof by them while the same was money and property of the plaintiff; and the defendant by keeping and retaining such fees, perquisites and remuneration for the use of said money did make and receive profit out of the public moneys of said State, amounting to, as plaintiff is informed and believes, the sum of ten thousand dollars ($10,000.00), and more, in excess of the annual salary and all other sums to be paid to the defendant, during his said term as such Treasurer, all of which said sums the defendant, received, retained and wrongfully withheld from the plaintiff and he has rendered no account to the plaintiff therefor; that he kept no public account of such receipts and disbursements and submitted no report thereof to the Governor or other officer of said State in connection with his annual reports as such Treasurer, or otherwise.

VI.

That said sums of money were paid to and received by the defendant, from said banks directly and indirectly and in various forms and by subterfuges adopted by the defendant, and said banks and others unknown to plaintiff for the purpose of concealing the payment thereof from, and of deceiving, the plaintiff and its officers, and plaintiff does not know and is unable to ascertain and set forth, the amount of money so received by the defendant for the use of the public moneys of said State; that because of the concealment of the facts relating to the payment of said sums of money to said defendant by such banks and others, the plaintiff is unable to state the exact amount so received and wrongfully retained and withheld by said defendant.

21 VII.

The plaintiff states, on information and belief, that the defendant from time to time during his term of office, placed public moneys of said State on deposit, subject to check or withdrawal at the will of the defendant, with other banks, corporations and individuals whose names are to plaintiff and its officers unknown, and the plaintiff is without definite information, and is therefore unable to state the names of all of the banks, corporations and individuals, from whom the defendant received money and reward for the use of its public moneys, and is unable to state the amount received from any of such sources by the defendant, and the plaintiff will be unable to ascertain the amount of money and profit received and wrongfully retained and withheld by the defendant from the plaintiff, for the

use of its public moneys, as aforesaid, unless the defendant be required to render an account to the plaintiff of his trust and of the sums of money and property so received and wrongfully withheld.

That the defendant is in full possession of said facts and the only person who has complete knowledge thereof, and that by reason of said facts and the things stated, the plaintiff is wholly without an adequate remedy at law against the defendant.

VIII.

That although the defendant collected and received said moneys during his said term of office and at all times since has wrongfully withheld the same, plaintiff alleges that it had no knowledge or information thereof, until on or about the 16th. day of February, 1914, when a general investigating committee, appointed by the Governor of said State, pursuant to the Act of the Legislature thereof, approved March 13, 1913, entitled An Act Providing for the Appointment of a Committee of Three Members to Examine the Con-
22 dition of all State Departments and Institutions, Etc., known as Chapter 261 of the Session Laws of South Dakota for the year, 1913, filed and submitted its report to the Governor and Legislature of 1915.

IX.

That prior to the commencement of this action, the plaintiff through its State Treasurer, the person authorized by law to receive said money so wrongfully withheld by the defendant, made due demand for the payment thereof to him by said defendant for the use and benefit of the plaintiff which demand the defendant refused and disregarded, and the said defendant, as plaintiff is informed and believes, now wrongfully keeps and withholds said money from the plaintiff and refuses to account to the plaintiff therefor.

Count Two.

For a further and separate cause of action against the defendant, the plaintiff states:

I.

That the plaintiff is one of the United States of America, and the defendant is and for more than five years past has been a resident and citizen of the United States and of the State of California, and is not a resident or citizen of the State of South Dakota.

II.

That at the regular biennial election held in said State of South Dakota on the 8th. day of November, A. D., 1904, the defendant was chosen by the qualified electors of said State as Treasurer thereof, and thereafter, on 4th. day of January, 1905 he took an oath to

support the Constitution of the United States and of the State of South Dakota, and faithfully to discharge the duties of said office of Treasurer, before one of the Judges of the Supreme Court of said State, and caused to be filed and recorded in the office of the
23 Secretary of State, his official bond as such State Treasurer in the sum of Five hundred thousand dollars ($500,000.00) signed by the defendant and sixty-one others, as sureties in and by which bond the defendant and said sixty-one others became held and firmly bound unto the State of South Dakota in the sum of Five hundred thousand dollars ($500,000.00) good and lawful money of the United States of America, to be paid to the State of South Dakota, and for which payment well and truly to be made, the defendant and his said sureties bound themselves, their heirs, executors, administrators and assigns, jointly and severally, upon the following conditions written in said bond:

"Whereas, the above bounden, C. B. Collins, has been elected to the office of Treasurer of the State of South Dakota, at the general election in and for the State of South Dakota, on the 8th day of November A. D., 1904.

Now, Therefore, the conditions of the above obligation are such that if the said C. B. Collins shall well and faithfully perform the duties of said office of Treasurer of the State of South Dakota, and shall cause the faithful performance of all persons appointed or employed by him in his office, of their duties and trust therein, and that he shall deliver to his successor in office or any person authorized by law to receive the same, all moneys, books, records, papers and other articles and effects belonging to his said office, then the above obligation to be void, otherwise, to remain in full force and effect."

That said bond was duly signed, sealed and delivered by the defendant and said sixty-one others to the State of South Dakota, and was on the 7th day of January, 1905, duly approved as the official bond of the defendant as such State Treasurer by the Governor, Presiding Judge of the Supreme Court and Attorney General of said State, and thereupon on said date, the defendant assumed and entered upon the discharge of the duties of said office and con-
24 tinued to discharge the same and to enjoy the benefits and emoluments of said office, throughout the official term of two years thereafter.

III.

That by virtue of his election to said office of Treasurer, and by entering upon, assuming and discharging the duties thereof, it became and was the duty of the defendant, during his said term of office to, and he agreed with the plaintiff that he would, receive and have charge of, and safely keep, all of the public moneys received by him, or which should be and was paid in to the state treasury of said state; keep an accurate account of the receipts and disbursements of the treasury in books provided for that purpose at the ex-

pense of the State, in which he should specify the names of the persons from whom he received, and to whom he paid out the same; and on what account the same was received or paid out, and the time of such receipt and payment, and submit a report to the governor of said State, on or before the fifteenth day of November of each year, showing a full and true exhibit of the state of the public accounts and funds received, and paid during the preceding fiscal year ending June thirtieth of said year, and the balance remaining in the treasury; that for his services as such Treasurer the defendant should have received, and did receive from the plaintiff, an annual salary of eighteen hundred dollars ($1,800.00) and he was not entitled to receive any fees or perquisites or other remuneration for the performance of any duties connected with said office, nor make any profit directly or indirectly out of the money of said State, or by using the same for any purpose not authorized by law.

IV.

That in the month of January, 1905, after the defendant assumed and entered upon the discharge of his duties as such State Treasurer, there came into his hands as such Treasurer, public moneys of the State of South Dakota, amounting to the sum of Five hundred thirteen thousand, four hundred thirteen dollars and forty-one cents ($513,413.41) and at various times thereafter he received additional sums of public moneys belonging to the plaintiff, which moneys from time to time during his said term of office, the defendant deposited in open accounts, and in sums for which he received certificates of deposit in the several banks hereinafter named in the State of South Dakota, and elsewhere, subject at all times to check or withdrawal by the defendant, and at the close of the last business day in each month during his said term of office he had on deposit in said banks as Treasurer of said State, of the public moneys so received by him, balances as follows:

Statement of Bank Accounts.

At close of business January 31, 1905.

Central Trust Company, Chicago	$76,175.17
First National Bank, Pierre, S. D.	69,623.08
American National Bank, Deadwood, S. D.	8,269.73
Aberdeen National Bank, Aberdeen, S. D.	32,967.09

Regents' Account.

Illinois Trust & Savings Bank, Chicago	16,147.75
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	5,000.00

Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Groton, Groton, S. D.	2,000.00
Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
	$279,182.82

At close of business February 28, 1905.

Central Trust Company, Chicago	$95,286.69
First National Bank, Pierre, S. D.	60,022.52

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American National Bank, Deadwood, S. D.	6,451.92
Aberdeen National Bank, Aberdeen, S. D.	30,121.81

Regents' Account.

Illinois Trust & Savings Bank, Chicago	13,041.23
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
	$280,924.17

At close of business March 31, 1905.

Central Trust Company, Chicago	$362,490.92
First National Bank, Pierre, S. D.	66,975.42

Regents' Account.

Illinois Trust & Savings Bank, Chicago	9,637.84
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Aberdeen, S. D.	25,000.00
American National Bank, Aberdeen, S. D.	20,000.00
Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Mitchell, S. D.	10,000.00
German Bank, Eureka, S. D.	5,000.00

Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
	$565,104.18

At close of business April 30, 1905.

Central Trust Company, Chicago	$423,927.54
First National Bank, Pierre, S. D.	71,522.25

Regents' Account.

Illinois Trust & Savings Bank, Chicago	10,249.20
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

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Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Clark County National Bank, Clark, S. D.	3,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
American National Bank, Deadwood, S. D.	20,000.00
	$634,698.99

At close of Business May 31, 1905.

Central Trust Company, Chicago	$476,606.12
First National Bank, Pierre, S. D.	69,816.39

Regents' Account.

Illinois Trust & Savings Bank, Chicago	6,743.08
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Mitchell, S. D.	10,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Clark County National Bank, Clark, S. D.	3,000.00

Aberdeen National Bank, Aberdeen, S. D.	30,000.00
American National Bank, Deadwood, S. D.	20,000.00
	$682,165.59

At close of business June 30, 1915.

Central Trust Company, Chicago	$452,558.39
First National Bank, Pierre, S. D.	63,952.75

Regents' Account.

Illinois Trust & Savings Bank, Chicago	3,129.80
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

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Certificate Account.

National Bank of Commerce, Pierre, S. D.	15,000.00
Pierre National Bank, Pierre, S. D.	15,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Aberdeen, S. D.	25,000.00
First National Bank of Deadwood, S. D.	20,000.00
First National Bank, Mitchell, S. D.	10,000.00
Clark County National Bank, Clark, S. D.	3,000.00
Security Bank, Clark, S. D.	6,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
	$654,640.94

At close of business July 31, 1905.

Central Trust Company, Chicago	$327,279.70
First National Bank, Pierre, S. D.	64,142.20

Regents' Account.

Illinois Trust & Savings Bank, Chicago	28,431.24
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
Security Bank, Clark, S. D.	6,000.00
German Bank, Eureka, S. D.	5,000.00

Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
	$554,853.16

At close of business August 31, 1905.

Central Trust Company, Chicago	$324,819.33
First National Bank, Pierre, S. D.	61,989.14

Regents' Account.

Illinois Trust & Savings Bank, Chicago	26,603.71
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

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Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
Security Bank, Clark, S. D.	6,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$553,412.18

At close of business September 30, 1905.

Central Trust Company, Chicago	$482,402.97
First National Bank, Pierre, S. D.	68,593.38

Regents' Account.

Illinois Trust & Savings Bank, Chicago	24,318.71
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
Security Bank, Clark, S. D.	6,000.00

German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$715,315.06

At close of business October 31, 1905.

Illinois Trust & Savings Bank, Chicago	$125,000.00
Central Trust Company, Chicago	378,338.97
First National Bank, Pierre, S. D.	68,263.20

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Regents' Account.

Illinois Trust & Savings Bank, Chicago	24,424.89
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

National Bank of Commerce, Pierre, S. D.	15,000.00
Pierre National Bank, Pierre, S. D.	15,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Aberdeen, S. D.	25,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Groton Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$730,027.06

At close of business November 30, 1905.

Illinois Trust & Savings Bank, Chicago	$125,000.00
Central Trust Company, Chicago	391,597.20
First National Bank, Pierre, S. D.	69,380.13

Regents' Account.

Illinois Trust & Savings Bank, Chicago	20,787.89
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00

Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$740,765.22

At close of business December 31, 1905.

Illinois Trust & Savings Bank, Chicago	$212,639.63

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Central Trust Company, Chicago	471,403.05
First National Bank, Pierre, S. D.	69,029.50

Regents' Account.

Illinois Trust & Savings Bank, Chicago	17,056.33
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$904,128.51

At close of business January 31, 1906.

Illinois Trust & Savings Bank, Chicago	$ 12,639.63
Central Trust Company, Chicago	211,988.85
First National Bank, Pierre, S. D.	68,493.11

Regents' Account.

Illinois Trust & Savings Bank, Chicago	16,950.89
Bank of Brookings, Brookings, S. D.	1,000.00
First National Bank, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00

First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$444,072.48

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At close of business February 28, 1906.

Illinois Trust & Savings Bank, Chicago	$ 21,562.46
Central Trust Company, Chicago	214,437.70
First National Bank, Pierre, S. D.	66,622.92

Regents' Account.

Illinois Trust & Savings Bank, Chicago	13,693.74
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$450,316.82

At close of business March 31, 1906.

Illinois Trust & Savings Bank, Chicago	$ 37,279.65
Central Trust Company, Chicago	358,836.56
First National Bank, Pierre, S. D.	77,972.22

Regents' Account.

Illinois Trust & Savings Bank, Chicago	10,155.42
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00

Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$618,243.85

33

At close of business April 30, 1906.

Illinois Trust & Savings Bank, Chicago	$ 37,279.65
Central Trust Company, Chicago	119,588.50
First National Bank, Pierre, S. D.	70,571.09

Regents' Account.

Illinois Trust & Savings Bank, Chicago	10,604.59
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$672,046.83

At close of business May 31, 1906.

Illinois Trust & Savings Bank, Chicago	$88,253.18
Central Trust Company, Chicago	436,207.10
First National Bank, Pierre, S. D.	62,559.09

Regents' Account.

Illinois Trust & Savings Bank, Chicago	6,921.48
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00

Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
34	
Bank of Brookings, Brookings, S. D.	5,000.00
	$727,940.85

At close of business June 30, 1906.

Illinois Trust & Savings Bank, Chicago	$116,275.59
Central Trust Company, Chicago	277,651.06
First National Bank, Pierre, S. D.	55,543.17

Regents' Account.

Illinois Trust & Savings Bank, Chicago	2,796.60
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
	$586,266.42

At close of business July 31, 1906.

Illinois Trust & Savings Bank, Chicago	$103,275.59
Central Trust Company, Chicago	84,510.51
First National Bank, Pierre, S. D.	52,995.05

Regents' Account.

Illinois Trust & Savings Bank, Chicago	35,490.04
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00

First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00

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Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
Security Bank, Clark, S. D.	10,000.00
Iroquois State Bank, Iroquois, S. D.	3,000.00
	$423,271.19

At close of business August 31, 1906.

Illinois Trust & Savings Bank, Chicago	$68,799.36
Central Trust Company, Chicago	95,286.11
First National Bank, Pierre, S. D.	42,317.68

Regents' Account.

Illinois Trust & Savings Bank, Chicago	32,464.80
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
Aberdeen National Bank, Aberdeen, S. D.	30,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank of Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Bank of Groton, Groton, S. D.	2,000.00
Brown County Banking Co., Groton, S. D.	2,000.00
Bank of Brookings, Brookings, S. D.	5,000.00
Security Bank, Clark, S. D.	10,000.00
Iroquois State Bank, Iroquois, S. D.	3,000.00
	$385,867.95

At close of business September 30, 1906.

Illinois Trust & Savings Bank, Chicago	$58,563.82
Central Trust Company, Chicago	221,238.80
First National Bank, Pierre, S. D.	43,187.79

Regents' Account.

Illinois Trust & Savings Bank, Chicago	29,840.51
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00

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First National Bank, Aberdeen, S. D.	25,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank, Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
German Bank, Eureka, S. D.	5,000.00
Iroquois State Bank, Iroquois, S. D.	3,000.00
	$450,830.95

At close of business October 31, 1906.

Illinois Trust & Savings Bank, Chicago	$20,000.00
Central Trust Company, Chicago	174,799.73
First National Bank, Pierre, S. D.	41,674.04

Regents' Account.

Illinois Trust & Savings Bank, Chicago	29,223.55
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
First National Bank, Mitchell, S. D.	10,000.00
First National Bank, Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
Iroquois State Bank, Iroquois, S. D.	3,000.00
	$358,697.32

At close of business November 30, 1906.

Illinois Trust & Savings Bank, Chicago	$20,000.00
Central Trust Company, Chicago	170,976.41
First National Bank, Pierre, S. D.	53,389.20

Regents' Account.

Illinois Trust & Savings Bank, Chicago	25,262.38
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

Pierre National Bank, Pierre, S. D.	15,000.00
National Bank of Commerce, Pierre, S. D.	15,000.00
First National Bank, Aberdeen, S. D.	25,000.00
First National Bank, Mitchell, S. D.	10,000.00

First National Bank, Deadwood, S. D.	20,000.00
Clark County National Bank, Clark, S. D.	3,000.00
Iroquois State Bank, Iroquois, S. D.	3,000.00
	$362,627.99

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At close of business December 31, 1906.

Central Trust Company, Chicago	$252,271.82
First National Bank, Pierre, S. D.	51,870.75
Pierre National Bank, Pierre, S. D.	55,175.63
National Bank of Commerce, Pierre, S. D.	52,374.54

Regents' Account.

Illinois Trust & Savings Bank, Chicago	21,424.29
First National Bank, Brookings, S. D.	1,000.00
Bank of Brookings, Brookings, S. D.	1,000.00

Certificate Account.

First National Bank, Aberdeen, S. D.	25,000.00
First National Bank, Deadwood, S. D.	20,000.00
First National Bank, Mitchell, S. D.	10,000.00
Clark County National Bank, Clark, S. D.	3,000.00
Iroquois State Bank, Iroquois, S. D.	3,000.00
	$496,115.03

V.

That at various times during his said term of office, in manner and form unknown to the plaintiff, the defendant collected and received from said banks and other persons and corporations, to plaintiff unknown, and, in violation of his agreement with the State when he entered upon the discharge of the duties of said office, he wrongfully kept and retained various sums of money and the equivalent thereof as fees and perquisites in consideration of the deposit of said sums of money in said banks, as interest or profit for permitting the use thereof by said banks, while, and as such Treasurer, in consideration of the deposit of said money by him with said banks, and the use thereof by them while the same was money and property of the plaintiff; and the defendant by keeping and retaining such fees, perquisites and remuneration for the use of said money did make and receive profit out of the public moneys of said State, amounting to, as plaintiff is informed and believes, the sum of ten thousand dollars ($10,000.00), and more, in excess of the annual salary and all other sums to be paid to the defendant, during his said term as

38 such Treasurer, all of which said sums the defendant, received, retained and wrongfully withheld from the plaintiff and he has rendered no account to the plaintiff therefor; that he kept no public account of such receipts and disbursements and submitted no

report thereof to the Governor or other officer of said State in connection with his annual reports as such Treasurer, or otherwise.

VI.

That said sums of money were paid to and received by the defendant, from said banks directly and indirectly and in various forms and by subterfuges adopted by the defendant, and said banks and others unknown to plaintiff for the purpose of concealing the payment thereof from, and of deceiving, the plaintiff and its officers, and plaintiff does not know and is unable to ascertain and set forth, the amount of money so received by the defendant for the use of the public moneys of said State; that because of the concealment of the fact relating to the payment of said sums of money to said defendant by such banks and others, the plaintiff is unable to state the exact amount so received and wrongfully retained and withheld by said defendant.

VII.

The plaintiff states, on information and belief, that the defendant from time to time during his term of office, placed public moneys of said State on deposit, subject to check or withdrawal at the will of the defendant, with other banks, corporations and individuals whose names are to plaintiff and its officers unknown, and the plaintiff is without definite information, and is therefore unable to state the names of all of the banks, corporations and individuals, from whom the defendant received money and reward for the use of its public moneys, and is unable to state the amount received from any of such sources by the defendant, and the plaintiff will be
39 unable to ascertain the amount of money and profit received and wrongfully retained and withheld by the defendant from the plaintiff, for the use of its public moneys, as aforesaid, unless the defendant be required to render an account to the plaintiff of his trust and of the sums of money and property so received and wrongfully withheld.

That the defendant is in full possession of said facts and the only person who has complete knowledge thereof, and that by reason of said facts and the things hereinbefore stated, the plaintiff is wholly without an adequate remedy at law against the defendant.

VIII.

That although the defendant collected and received said moneys during his said term of office and at all times since has wrongfully withheld the same, plaintiff alleges that it had no knowledge or information thereof, until on or about the 16th day of February, 1914, when a general investigating committee, appointed by the Governor of said State, pursuant to the Act of the Legislature thereof, approved March 13, 1913, entitled An Act Providing for the Appointment of

a Committee of Three Members to Examine the Condition of All State Departments and Institutions, Etc., known as Chapter 261 of the Session Laws of South Dakota, for the year, 1913, filed and submitted its report to the Governor and Legislature of 1915.

IX.

That prior to the commencement of this action, the plaintiff through its State Treasurer, the person authorized by law to receive said money so wrongfully withheld by the defendant, made due demand for the payment thereof to him by said defendant for the use and benefit of the plaintiff, which demand the defendant refused and disregarded, and the said defendant, as plaintiff is informed and believes, now wrongfully keeps and withholds said money
391½ from the plaintiff and refuses to account to the plaintiff therefor.

Wherefore, plaintiff being wholly without an adequate remedy at law, prays the equitable interposition of this Honorable Court, to the end that process of subpœna may issue to the defendant herein in conformity with the rules of this Honorable Court; that the defendant may be required to answer this, the plaintiff's bill of complaint, fully and specifically, but not under oath, at such time as the Court shall deem proper, and that he be required to render a true and accurate account and make full disclosure to the plaintiff, of all sums of money and property, profit and reward received and wrongfully withheld by him from the State, in violation of his public trust as hereinbefore set forth, and that he be required to pay over to the plaintiff such sums as the Court shall find the plaintiff entitled to recover from him, and for such other and further relief as the Court shall deem just and equitable.

CLARENCE C. CALDWELL,
Attorney General for the State of South Dakota.
ROBERT J. GAMBLE,
EDWARD E. WAGNER,
GEORGE J. DANFORTH,
Solicitors for Plaintiff.

40 STATE OF SOUTH DAKOTA,
County of Miner, ss:

I, Clarence C. Caldwell, being first duly sworn on oath depose and say: that I am Attorney General of the State of South Dakota; that this suit is brought for and on behalf of the said State by and under the direction of the Honorable Frank M. Byrne, Governor thereof; that I have read the foregoing Bill of Complaint; know the contents thereof, and the same is true to the best of my knowledge, information and belief; that such knowledge, information and belief are based upon inspection and examination of the papers and documents in the office of the Governor and State Treasurer, and the Report of the Investigating Committee referred to in said Bill of Com-

plaint, and personal investigation of the facts set forth in said Bill of Complaint.

CLARENCE C. CALDWELL.

Subscribed and sworn to before me this 23rd. day of December A. D., 1915.

RICHARD E. BALDWIN.
[SEAL.] *Notary Public, South Dakota.*

Office Supreme Court, U. S. Filed Mar. 6, 1916. James D. Maher, Clerk. And on the same day, towit, the 6th day of March, A. D., 1916, an appearance was entered for complainant, as follows, viz.:

41 *Order for Appearance.*

Supreme Court of the United States.

No. 17 Orig'l. October Term, 1915.

THE STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS.

The Clerk will enter my appearance as Counsel for the Complainant.

CLARENCE C. CALDWELL.
Address, Howard, S. D.
EDWARD E. WAGNER,
(P. O. Address) Sioux Falls, S. D.

NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

(Endorsed:) Supreme Court U. S. October Term, 1915. Term No. 17 Original. Appearance for Compl't. Filed Mar. 6th, 1916.

42 And afterwards, towit, on the 7th day of March, A. D. 1916, the subpœna was issued to the Marshal.

And afterward, to wit, on the 20th day of March, A. D. 1916, the subpœna and Marshal's return were filed in words and figures following, viz.:

43 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to Charles B.
[SEAL.] Collins, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in Equity, you are hereby commanded

that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court, holding jurisdiction in Equity, on Monday, October 9th, 1916, at the City of Washington, in the District of Columbia, being the Seat of the National Government of the United States, to answer unto a bill of complaint of The State of South Dakota in the said Court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Edward D. White, Chief Justice of the United States, at the City of Washington, the 7th day of March, A. D. 1916.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Sou. District of Cal., ss:

I hereby certify and return that I served the annexed subpœna together with certified copy of the bill of complaint on the therein named Charles B. Collins by handing to and leaving a true and correct copy thereof with Charles B. Collins personally at Los
44 Angeles, Cal., in said District on the 14th day of March, A. D. 1916.

C. T. WALTON,
U. S. Marshal.
By J. S. BASSETT,
Deputy.

Came to my hand at my office the 7th day of March 1916, and for the purpose of executing this process, I, Frank K. Green, Marshal of the Supreme Court of the United States, do hereby deputize and authorize Charles T. Walton, United States Marshal for the Southern District of California or any of his deputies authorized thereto by him to serve this subpœna on the defendant named herein and make due return thereof.

Witness my hand this 8th day of March 1916, at Washington City, D. C.

FRANK K. GREEN,
Marshal, Supreme Court, U. S.

Executed as certified by the endorsement hereon, and return made this 20th day of March, 1916.

FRANK K. GREEN,
Marshal, Supreme Court, U. S.

(Endorsed:) Supreme Court U. S. October Term, 1915. Term No. 17, Original. The State of South Dakota, Complainant, vs. Charles B. Collins. Subpœna and Marshal's return. Filed March 20, 1916.

And afterwards, towit, on the 2d day of October, A. D. 1916, an answer was filed in words & figures, viz:

45 In the case order for appearance

Supreme Court of the United States, I. October Term, 1916.

#14, Orig.

THE STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS, Defendant.

I hereby deny the allegation as set forth in the complaint and plead not guilty to the charge of misappropriating, withholding or converting to my personal use, and moneys belonging to the State of South Dakota during my term of office.

CHARLES B. COLLINS,
Defendant.

Los Angeles, California, September 23d, 1916.

(Endorsed:) Supreme Court U. S. October Term, 1916. Term No. 14, Original. The State of South Dakota, Complainant, vs. Charles B. Collins. Answer. Filed October 2, 1916.

And afterwards, towit, on the 5th day of January, A. D. 1917, a notice & motion for the appointment of a Referee in this cause, was filed in words & figures following, viz:

46 In the Supreme Court of the United States, October Term, A. D. 1916.

THE STATE OF SOUTH DAKOTA, Plaintiff,

vs.

CHARLES B. COLLINS, Defendant.

Notice of Motion.

To the Defendant:

You will please take notice that the plaintiff has filed the annexed motion in the office of the Clerk of the Supreme Court at Washington, D. C., and that on the 15th day of January, A. D. 1917, at ten o'clock A. M., or as soon thereafter as counsel may be heard, the plaintiff will bring said motion on for hearing at the Court Room of the Supreme Court of the United States, at the City of Washington, in the District of Columbia.

Dated this 8th day of December, 1916.

CLARENCE C. CALDWELL,
Attorney General of South Dakota.
EDWARD E. WAGNER,
Solicitors for Plaintiff.

47 In the Supreme Court of the United States, October Term, A. D. 1916.

THE STATE OF SOUTH DAKOTA, Plaintiff,

vs.

CHARLES B. COLLINS, Defendant.

Motion for Order Appointing Referee.

Comes now the plaintiff and moves the Court to appoint William Wallace, Esq., of Aberdeen, South Dakota, as Referee to take and report the evidence on the part of the plaintiff and defendant in the above entitled suit, with authority to administer oaths to witnesses, and make findings and recommendations if he shall be so directed by the Court, and that he be fully authorized to do all things in that behalf which the Court may direct.

CLARENCE C. CALDWELL,
Attorney General of South Dakota.
EDWARD E. WAGNER,
Solicitors for Plaintiff.

Office Supreme Court, U. S. Filed Jan. 5, 1917. James D. Maher, Clerk.

And afterwards, towit, on the 8th day of January, A. D. 1917, an answer was filed in words & figures following, viz:

48 Hon. James D. Maher, Clerk of the Supreme Court of the U. S.

DEAR SIR: In the case—Order for Appearance Supreme Court of the United States No. 14.—Orig. 1.—October Term, 1916. The State of South Dakota, Complainant vs. Charles B. Collins, Defendant.

I hereby deny the allegation as set forth in the complaint and plead not guilty to the charge of misappropriating, diverting, withholding or converting to my personal use money belonging to the State of South Dakota during my term of office.

CHARLES B. COLLINS.

(Endorsed:) Supreme Court U. S., October Term, 1916. Term No. 14 Original. The State of South Dakota, Complainant, vs. Charles B. Collins. Answer of Defendant. Filed January 8, 1917.

And afterwards, towit, on the 6th day of March, A. D. 1917, the following entry appears of record, viz:

49 THE STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS.

Mr. Thomas Sterling in behalf of counsel for the Complainant submitted to the consideration of the Court a *a* motion for the appointment of a referee in this cause.

March 6, 1917.

And afterwards, to-wit, on the 12th day of March, A. D. 1917, the following entry appears of record, viz:

50 Supreme Court of the United States, October Term, 1916.

No. 14, Original.

THE STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS.

On consideration of the motion for the appointment of William Wallace to take and return the evidence of the part of the Complainant and Defendant in this cause,

It is now here ordered by the court that the said motion be, and the same is hereby, granted.

March 12, 1917.

(Endorsed:) Supreme Court of the United States, October Term, 1916. Term No. 14 Original. The State of South Dakota, Complainant, vs. Charles B. Collins. Order on motion for appointment of Mr. Wallace. Filed March 12, 1917.

And afterwards, to-wit, on the 14th day of October, A. D. 1918, the following entry appears of record, viz:

51 No. 10, Original.

THE STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS.

On motion of Mr. Samuel Herrick of counsel for the Complainant leave is hereby granted to file, open and publish the testimony herein.

October 14, 1918.

And on the same day, to-wit, on the 14th day of October, A. D. 1918, an appearance was entered for the complainant as follows, viz:

52 *Order for Appearance.*

Supreme Court of the United States, October Term, 1918.

No. 10, Orig'l.

THE STATE OF SOUTH DAKOTA, Comp't,

vs.

CHARLES B. COLLINS.

The Clerk will enter my appearance as counsel for the Complainant.

(*Name*) SAMUEL HERRICK.
(*P. O. Address*) *Westory Bldg.*

☞NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

Endorsed: Supreme Court U. S., October Term, 1918. Term No. 10, Orig'l. Appearance for Complainant. Filed October 11, 1918.

53 SEATTLE, WASH., Nov. 5, 1917.

C. B. COLLINS being called as a witness on behalf of the claimant, was first duly sworn to testify the truth, the whole truth, and nothing but the truth, and testified as follows:

Direct examination.

By Mr. Caldwell

Q. State your name?
A. Charles B. Collins.
Q. Where do you live, Mr. Collins?
A. Why, my home is at Los Angeles, California. That is where my family is.
Q. You are in business in Seattle, are you?
A. Why, I am temporarily.
Q. How long have you resided in California?
A. Two years and a half.
Q. Before that, where did you live?
A. Minnesota and South Dakota.
Q. How long did you live in Minnesota before taking up your residence in California?
A. Three years, I think.
Q. And before residing in Minnesota, you were a resident of South Dakota?
A. Of Groton, South Dakota.

Q. At one time you were State treasurer of South Dakota, were you not?

A. Yes, sir.

Q. And you served two terms?

54 A. Yes, sir. Four years.

Q. Beginning January, 1903?

A. 1902, I think, was it not?

Q. You were elected in the fall of 1902?

A. Yes, sir.

Q. And as such State treasurer you had the custody of the public money of South Dakota, did you not?

A. I did.

Q. And you were not only State Treasurer of the State of South Dakota, but also treasurer of the Regents of Education, is that not true?

A. Yes, sir.

Q. And you qualified twice then as State Treasurer, did you not?

A. Yes, sir. I did.

Q. And you gave a bond each time?

A. Yes, sir.

Exhibit "A" marked for identification.

Q. I show you Exhibit "A," the same purporting to be a certified copy of your bond and oath, as Treasurer of South Dakota, purporting to be certified to by J. T. Nelson, assistant secretary of state, and ask you if you recognize that as a copy of the bond that you gave in January, 1903?

A. I think it is.

Q. And at the top of the first page there appears what purports to be a copy of your oath, do you recognize that as a copy of the oath you took at that time?

A. Why, I could not swear it was an exact copy of it. I am presuming it was.

55 Q. You do not doubt but what it is?

A. I would accept it anyway.

Exhibit "B" marked for indentification.

Q. Now, I show you Exhibit "B," the same purporting to be a certified copy of your bond as State Treasurer, given in January, 1905, certified to by J. T. Nelson, assistant secretary of state of the State of South Dakota, and ask you if you recognize that as a copy of your bond and oath given in January, 1905, for your second term?

A. I think it is. I have no doubt but what it is.

Mr. Caldwell: I offer both Exhibit A and Exhibit B in evidence.

Mr. Collins: No objection.

(Said Exhibits A and B are as follows:)

EXHIBIT "A."

State of South Dakota,

Department of State,

Secretary's Office.

UNITED STATES OF AMERICA,
State of South Dakota:

This is to certify that the attached instrument of writing is a true, correct and examined copy of Official Bond of C. B. Collins, as State Treasurer, and the whole thereof and has been carefully compared with the original now on file in this office and found correct.

The within document, book, instrument, paper or law shall not be received in evidence in any court of this state unless this
56 certificate is countersigned by the state treasurer with a statement of the fees received.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at the City of Pierre, the Capitol, on this 5th day of May, 1914.

Secretary of State.

[SEAL.] J. T. NELSON,
Assistant Secretary of State.

Fees $6.00.

Countersigned by:
A. W. EWERT,
State Treasurer.
By W. S. O'BRIEN,
Deputy.

57 *Oath.*

STATE OF SOUTH DAKOTA,
County of Hughes, ss:

I, C. B. Collins, having been elected to the office of State Treasurer, within and for the said State, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of South Dakota, and that I will faithfully discharge all the duties of my said office of state treasurer.

C. B. COLLINS.

Subscribed and sworn to before me this 6th day of January, 1903.

D. CORSON,
Judge of Sup. Court.

Official Bond of C. B. Collins as Treasurer of the State of South Dakota.

Know All Men by These Presents:

That we, C. B. Collins, as principal, and L. H. Neff, R. A. Mather, F. H. Smith, C. R. Dolan, R. F. Ebersold, V. F. Rathbun, S. J. Griffin, H. O. Frank, C. F. Schinkel, K. McKenzie, O. F. Edwards, M. F. Bowler, O. F. James, F. C. Robinson, S. B. Rowe, A. H. Potter, W. S. Streeter, A. Ringger, Wm. Blair, Wm. Koepsel, E. Moore, H. W. Cassels, A. H. Miller, W. J. Wegner, John A. Abraham, J. C. Wolfe, J. W. Kroft, John E. Townsend, J. D. James, E. J. Mather, J. B. Quiggle, C. J. McLeod, F. B. Gannon, J. H. Suttle, Alfred Abraham, C. A. Olson, C. W. Kranhold, Frank G. Broogberg, and J. F. Edwards, as sureties, are held and firmly bound unto the State of South Dakota, in the sum of two hundred and fifty thou-
58 sand ($250,000.00) dollars, good and lawful money of the United States of America, to be paid to the State of South Dakota, for which payment well and truly to be made, we bind ourselves, our heirs, our executors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 1st, 15th, 16th, 20th days of December, 1902, and 2nd and 3rd days of January, 1903, A. D.

Whereas, the above bounden C. B. Collins has been duly elected to the office of Treasurer of the State of South *of South* Dakota, at the general election held in and for the State of South Dakota, on the 4th day of November, A. D. 1902,

Now, therefore, the condition- of the above obligation are such that if the said C. B. Collins shall well and faithfully perform the duties of said office of Treasurer of the State of South Dakota, and shall cause the faithful performance of all persons appointed or employed by him in his office, of their duties and trusts therein, and that he shall deliver to his successor in office or any person authorized by law to receive the same, all moneys, books, records, papers and other articles and effects belonging to his said office, then the above obligation to be void, otherwise, to remain in full force and effect.

Signed and sealed in presence of:

F. E. Campbell as to each and every one.

C. B. COLLINS. [SEAL.]
L. H. NEFF. [SEAL.]
R. A. MATHER. [SEAL.]
F. H. SMITH. [SEAL.]
C. R. DOLAN. [SEAL.]
R. T. EBERSOLD. [SEAL.]
V. F. RATHBUN. [SEAL.]
59 S. J. GRIFFIN. [SEAL.]

F. E. Campbell as to each and every one.

H. O. FRANK. [SEAL.]
C. F. SCHINKEL. [SEAL.]
K. McKENZIE. [SEAL.]

O. F. EDWARDS. [SEAL.]
M. F. BOWLER. [SEAL.]
O. S. JAMES. [SEAL.]
F. C. ROBINSON. [SEAL.]
S. B. ROWE. [SEAL.]
A. H. POTTER. [SEAL.]
W. S. STREETER. [SEAL.]
A. RINGGER. [SEAL.]
WM. BLAIR. [SEAL.]
WM. KOEPSEL. [SEAL.]
E. MOORE. [SEAL.]
H. W. CASSELS. [SEAL.]
A. H. MILLER. [SEAL.]
W. J. WEGNER. [SEAL.]
JOHN A. ABRAHAM. [SEAL.]
J. C. WOLFE. [SEAL.]
J. W. KRAFT. [SEAL.]
JOHN E. TOWNSEND. [SEAL.]
F. D. JAMES. [SEAL.]
E. J. MATHER. [SEAL.]
J. B. QUIGGLE. [SEAL.]
C. J. McLEOD. [SEAL.]
F. B. GANNON. [SEAL.]
J. H. SUTTLE. [SEAL.]
ALFRED ABRAHAM. [SEAL.]
60 C. A. OLSON. [SEAL.]
C. W. KRANHOLD. [SEAL.]
FRANK G. BROOBERG. [SEAL.]
J. F. EDWARDS. [SEAL.]

STATE OF SOUTH DAKOTA,
County of Hughes, ss:

I, C. B. Collins, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of South Dakota, and that I will faithfully and impartially to the best of my knowledge and ability, perform all the duties of the office of Treasurer of the State of South Dakota, as provided by the condition of my bond, written within. So help me God.

———.

Subscribed and sworn to before me and in my presence by C. B. Collins this — day of January, A. D. 1903.

———.
Judge of Supreme Court of S. D.

61 *Acknowledgment.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this first day of December, A. D. 1902, before me, F. E. Campbell, a Notary Public in and for said County and State, personally

appeared C. B. Collins, and L. H. Neff, F. H. Smith, R. A. Mather, C. R. Dolan and R. F. Ebersold, to me personally known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 15th day of December, A. D. 1902, before me, F. E. Campbell, a Notary Public in and for said County and State, personally appeared V. F. Rathbun, S. J. Griffin, H. O. Frank, C. F. Schenkel, K. McKenzie, O. F. Edwards, M. F. Bowler, O. F. James, F. C. Robinson, S. B. Rowe, A. H. Potter, W. S. Streeter, A. Ringger, Wm. Blair, Wm. Koepsel, E. Moore, H. W. Cassels, A. H. Miller, W. J. Wegner and John A. Abraham, to me personally known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

62 *Acknowledgement.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 16th day of December, A. D. 1902, before me, F. E. Campbell, a Notary Public in and for said County and State, personally appeared J. C. Wolfe, J. W. Kraft, John E. Townsend, F. D. James, and E. J. Mather, to me personally known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Acknowledgement.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 20th day of December, A. D. 1902, before me, F. E. Campbell, a Notary Public in and for said county and State, personally appeared J. B. Quiggle, to me personally known to be the persons who *are* described in and who executed the above and foregoing instrument, and acknowledged to me that *they* executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 2 day of January, A. D. 1903, before me, F. E. Campbell, a Notary Public in and for said County and State, personally appeared C. J. McLeod, F. B. Gannon and J. H. Suttle, to me known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Acknowledgment.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 3 day of January, A. D. 1903, before me, W. E. Stevens, a Notary Public in and for said County and State, personally appeared Alfred Abraham and C. A. Olson, to me personally known to be the persons who are described in and who executed the above and foregoing instrument and acknowledged to me that they executed the same.

[SEAL.] W. E. STEVENS,
Notary Public, Brown Co., S. D.

Acknowledgment.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 3rd day of January, A. D. 1903, before me, F. E. Campbell, a Notary Public in and for said County and State, personally appeared C. W. Kranhold, Frank G. Brooberg, and J. F. Edwards, to me personally known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

L. H. Neff, R. A. Mather, F. H. Smith, C. R. Dolan, and R. F. Elsersold, being first duly sworn, each for himself, says that he is one *one* the sureties on the within and foregoing bond; that he is a resident and freeholder of the state of South Dakota, that he is worth the amount set opposite his respective name over and above his debts

and liabilities, and exemptions, and that he has property in the State of South Dakota subject to execution equal to the sum set opposite his respective name.

L. H. NEFF, Ten thousand (10,000,00) Dollars.
R. A. MATHER, Seven thousand (7,000,00) Dollars.
F. H. SMITH, Ten thousand (10,000,00) Dollars.
C. R. DOLAN, Ten thousand (10,000,00) Dollars.
R. F. EBERSOLD, Five thousand (5,000,00) Dollars.

Subscribed and sworn to before me this 1st day of December, 1902.
[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

65 V. F. Rathbun, S. J. Griffin, H. O. Frank, C. F. Schinkel, and K. McKenzie, being first duly sworn, each for himself says, that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the state of South Dakota, that he is worth the amount set opposite his respective name over and above his debts and liabilities, and exemptions, and that he has property in the state of South Dakota, subject to execution equal to the sum set opposite his respective name.

V. F. RATHBUN, Ten thousand (10,000,00) Dollars.
S. J. GRIFFIN, Ten thousand (10,000,00) Dollars.
H. O. FRANK, Five thousand (5,000,00) Dollars.
C. F. SCHINKEL, Five thousand (5,000,00) Dollars.
K. McKENZIE, Five thousand (5,000,00) Dollars.

Subscribed and sworn to before me this 15 day of December, 1902.
[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

O. F. Edwards, M. F. Bowler, O. F. James, F. C. Robinson and S. B. Rowe, being first duly sworn, each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above his debts and liabilities and exemptions, and that he has property in the State

of South Dakota, subject to execution equal to the sum set opposite his respective name.

66 O. F. EDWARDS, Three thousand (3,000.00) Dollars.
M. F. BOWLER, Five thousand (5,000.00) Dollars.
O. F. JAMES, Three thousand (3,000.00) Dollars.
F. C. ROBINSON, Ten thousand (10,000.00) Dollars.
S. B. ROWE, Three thousand (3,000.00) Dollars.

Subscribed and sworn to before me this 15 day of December, 1902.
[SEAL.] F. E. CAMPBELL.
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

E. Moore, H. W. Cassels, A. H. Miller, W. J. Wegner, and John A. Abraham, being first duly sworn, each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above his debts and liabilities and exemptions, and that he has property in the state of South Dakota, subject to execution equal to the sum set opposite his respective name.

E. MOORE, Three thousand (3,000.00) Dollars.
H. W. CASSELS, Ten thousand (10,000.00) Dollars.
A. H. MILLER, Five thousand (5,000.00) Dollars.
W. J. WEGNER, Three thousand (3,000.00) Dollars.
JOHN A. ABRAHAM, Five thousand (5,000.00) Dollars.

Subscribed and sworn to before me this 15 day of December, 1902.
[SEAL.] F. E. CAMPBELL.
Notary Public, Brown Co., S. D.

67 *Justification.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

A. H. Potter, W. S. Streeter, A. Ringger, Wm. Blair, and Wm. Koepsel, being first duly sworn, each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above his debts and liabilities and exemptions and that he has property in the State

of South Dakota subject to execution equal to the sum set opposite his respective name.

A. H. POTTER, Five thousand (5,000.00) Dollars.
W. S. STREETER, Three thousand (3,000.00) Dollars.
A. RINGER, Five thousand (5,000.00) Dollars.
WM. BLAIR, Two thousand (2,000.00) Dollars.
WM. KOEPSEL, Three thousand (3,000.00) Dollars.

Subscribed and sworn to before me this 15 day of December, 1902.
[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

J. C. Wolfe, J. W. Kraft, John E. Townsend, F. D. James, and E. J. Mather, being first duly sworn each for himself says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above his
68 debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite his respective name.

J. C. WOLFE, Five thousand (5,000.00) Dollars.
J. W. KRAFT, Five thousand (5,000.00) Dollars.
JOHN W. TOWNSEND, Five thousand (5,000.00) Dollars.
F. D. JAMES, Five thousand (5,000.00) Dollars.
E. J. MATHER, Five thousand (5,000.00) Dollars.

Subscribed and sworn to before me this 16th day of December, 1902.
[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

J. B. Quiggle, being first duly sworn each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota; that he is worth the amount set opposite his respective name over and above his debts and liabilities and exemptions, and that he has property in the

state of South Dakota, subject to execution, equal to the sum set opposite his respective name.

J. B. QUIGGLE, Five thousand (5,000,00) Dollars.

Subscribed and sworn to before me this 20th day of December, 1902.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

689 *Justification.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

C. J. McLeod, F. B. Gannon, and J. H. Suttle, being first duly sworn each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota; that he is worth the amount set opposite his name, over and above his debts, liabilities and exemptions, and that he has property in the State of South Dakota subject to execution, equal to the sum set opposite his respective name.

C. J. McLEOD, Five thousand (5,000) Dollars.
F. B. GANNON, Thirty thousand (30,000) Dollars.
J. H. SUTTLE, Twenty thousand (20,000) Dollars.

Subscribed and sworn to before me this 2 day of January A. D. 1903.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co. S. Dak.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

Alfred Abraham being first duly sworn, each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota; that he is worth the amount set opposite his respective name, over and above his debts, liabilities and exemptions, and that he
690½ has property in the State of South Dakota, subject to execution, equal to the sum set opposite his respective name.

ALFRED ABRAHAM, Ten thousand (10,000) Dollars.
C. A. OLSON, Two thousand (2,000) Dollars.

Subscribed and sworn to before me this 3 day of January, A. D. 1903.

[SEAL.] W. E. STEVENS,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

C. W. Kranhold, and J. F. Edwards, being first duly sworn each for himself says that he is one of the sureties on the within and foregoing bond; that he is a resident and a freeholder of the State of South Dakota; that he is worth the amount set opposite his respective name, over and above his debts, liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution, equal to the sum set opposite his respective name.

C. W. KRANHOLD, Five thousand (5,000) Dollars.
J. F. EDWARDS, Three thousand (3,000) Dollars.

Subscribed and sworn to before me this 3 day of January, 1903.

Assistant Secretary.

[SEAL.] F. E. CAMPBELL.
Notary Public, Brown Co., S. D.

79 *Justification.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

Frank G. Brooberg, being first duly sworn says that he is one of the sureties on the within and foregoing bond; that he is a freeholder of the State of South Dakota and is worth the sum of Ten thousand (10,000.00) Dollars over and above his debts, liabilities and exemptions and that he has property in the State of South Dakota subject to execution equal to the sum of Ten thousand dollars.

FRANK G. BROOBERG.

Subscribed and sworn to before me this 3d day of January 1903.

[SEAL.] F. E. CAMPBELL.
Notary Public.

STATE OF SOUTH DAKOTA,
Office Secretary of State, ss:

I hereby certify that the within instrument was filed for record on the sixth day of January A. D. 1903, at 9 o'clock a. m. and recorded in Vol. 1, of page 301, Record of Official Oath and Bond of this office.

O. C. BERG,
Secretary of State.
By E. N. GRAVES,
Assistant Secretary.

71 Filed in the office of the Secretary of State this 6th day of January 1903, at 9 o'clock a. m.

O. C. BERG,
Secretary of State.
By E. N. GRAVES,
Assistant Secretary.

Official Bond of C. B. Collins, Treasurer of the State of South Dakota.

The within bond is hereby approved this fifth day of January, 1903.

CHARLES N. HERRIED,
Governor.

D. HANEY,
Presiding Judge of the Supreme Court.
A. W. BURTT,
Attorney General.

72 EXHIBIT "B."

State of South Dakota.

Department of State.

UNITED STATES OF AMERICA,
State of South Dakota:

Secretary's Office.

This is to certify that the attached instrument of writing is a true, correct and examined copy of official bond of C. B. Collins as State treasurer, and the whole thereof, and has been carefully compared with the original now on file in this office and found correct.

The within document, book, instrument, paper or law shall not be received in evidence in any Court of this State unless this certificate is countersigned by the State Treasurer with a statement of the Fees received.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the State of South Dakota, at the City of Pierre, the Capitol, on this 5th day of May, 1914.

_____,
Secretary of State.
J. T. NELSON,
Assistant Secretary of State.

Great seal of State of South Dakota.

Countersigned by:
A. W. EWERT,
State Treasurer.
By W. S. O'BRIEN,
Deputy.
Fees, $6.00.

73 C. B. Collins, having been re-elected at the regular 1904 election to the office of State Treasurer of the State of South Dakota, he did, on the 7th day of January, 1905, and prior to the approval of the within bond, account for and produce before the undersigned a satisfactory exhibit of all funds and property in his control, under color of his said office during his expiring term of office as such State Treasurer, such accounting and exhibit consisting principally of a statement from the State Auditor and one from the State Treasurer, showing the amounts of the various funds and where deposited, also verified statements from the various banks where said funds are deposited, as provided by section 336, revised political code, and the exhibition to us of certificates of deposit issued by banks to said State Treasurer.

Dated this 7th day of January, 1905.

SAMUEL H. ELROD,
Governor.
D. CORSON,
Presiding Judge of the Supreme Court.
PHILO HALL,
Attorney General.

74 *Official Bond of C. B. Collins as Treasurer of the State of South Dakota.*

Know all men by these presents:

That we, C. B. Collins, as principal, and R. A. Mather, Anna M. Neff, W. B. Miller, K. McKenzie, F. C. Robinson, H. W. Cassels, F. G. Brooberg, Rudolph T. Ebersold, J. L. W. Zietlow, H. O. Frank, M. F. Bowler, O. F. Edwards, A. Ringger, J. C. Wolfe, F. H. Smith, Vergil Rathbun, C. F. Schinkel, J. D. Jones, Wm. Bowles, C. W. Kranhold, John Gengerke, C. A. Neuman, S. J. Griffin, J. H. Anderson, W. H. Preston, W. S. Streeter, N. O. P. Synoground, W. J. Wegner, C. K. Neff, F. D. James, W. I. Erwin, A. T. Amsden, A. H. Potter, D. H. Hatton, J. T. Hatton, J. D. Reeves, A. A. Miller, E. J. Mather, Alfred Abrahamson, Howard W. Cole, Chas. Eygabroad, F. B. Gannon, J. H. Suttle, Wm. Bain, C. J. McLeoud, John Schomack, Charles Marquardt, John E. Townsend, Richard E. Wanger, John A. Abrahamson, Isaac Ritter, W. J. Rawson, Louis J. Johnson, J. F. Edwards, S. B. Rowe, Wm. Koepsel, Harris Franklin, Nathan E. Franklin, Burton A. Cummins, C. C. Bennett, as sureties, are held and firmly bound unto the State of South Dakota in the sum of Five Hundred Thousand Dollars ($500,000.00) good and lawful money of the United States of America, to be paid to the State of South Dakota for which payment, well and truly to be made, we bind ourselves, our heirs, our executors, and administrators and assigns jointly and severally by these presents.

Sealed with our seals and dated this seventeenth day of November, A. D. 1904.

75 Whereas, the above bounden C. B. Collins has been duly elected to the office of Treasurer of the State of South Dakota, at the general election held in and for the State of South Dakota, on the 8th day of November, A. D. 1904.

Now, therefore, the conditions of the above obligation are such that if the said C. B. Collins, shall well and faithfully perform the duties of said office of Treasurer of the State of South Dakota, and shall cause the faithful performance by all persons appointed or employed by him in his office, of their duties and trust therein, and that he shall deliver to his successor in office or any person authorized by law to receive the same, all moneys, books, records, papers and other articles and effects belonging to said office then the above obligation to be void, otherwise to remain in full force and effect.

Signed and sealed in presence of:

C. B. COLLINS. [SEAL.]
R. A. MATHER. [SEAL.]
ANNA M. NEFF. [SEAL.]
W. B. MILLER. [SEAL.]
K. McKENZIE. [SEAL.]
F. C. ROBINSON. [SEAL.]
H. W. CASSELS. [SEAL.]
F. G. BROOBERG. [SEAL.]
RUDOLPH T. EBERSOLD. [SEAL.]
J. L. W. ZEITLOW. [SEAL.]
H. O. FRANK. [SEAL.]
M. F. BOWLER. [SEAL.]
O. F. EDWARDS. [SEAL.]
A. RINGGER. [SEAL.]
J. C. WOLFE. [SEAL.]
76 F. H. SMITH. [SEAL.]
VIRGIL RATHBUN. [SEAL.]
C. F. SCHINKEL. [SEAL.]
J. D. JONES. [SEAL.]
WM. BOWLES. [SEAL.]
C. W. KRANHOLD. [SEAL.]
JOHN GENGERKE. [SEAL.]
C. A. NEUMAN. [SEAL.]
S. J. GRIFFIN. [SEAL.]
J. H. ANDERSON. [SEAL.]
W. H. PRESTON. [SEAL.]
W. S. STREETER. [SEAL.]
N. O. P. SYNOGROUND. [SEAL.]
J. N. WEGNER. [SEAL.]
C. K. NEFF. [SEAL.]
F. D. JAMES. [SEAL.]
W. I. ERWIN. [SEAL.]
A. T. AMSDEN. [SEAL.]
A. H. POTTER. [SEAL.]
D. H. HATTON. [SEAL.]
J. T. HATTON. [SEAL.]

	J. D. REEVES.	[SEAL.]
	A. A. MILLER.	[SEAL.]
	E. J. MATHER.	[SEAL.]
	ALFRED ABRAHAM.	[SEAL.]
	HOWARD W. COLE.	[SEAL.]
	CHAS. EYGABROAD.	[SEAL.]
	F. B. GANNON.	[SEAL.]
	J. H. SUTTLE.	[SEAL.]
	WM. BAIN.	[SEAL.]
	C. J. McLEOD.	[SEAL.]
77	JOHN SCHORNACK.	[SEAL.]
	CHAS. MARQUARDT.	[SEAL.]
	JOHN O. TOWNSEND.	[SEAL.]
	RICHARD E. WAGENER.	[SEAL.]
	JOHN A. ABRAHAM.	[SEAL.]
	ISAAC RITTER.	[SEAL.]
	W. J. RAWSON.	[SEAL.]
	LOUIS J. JOHNSON.	[SEAL.]
	J. F. EDWARDS.	[SEAL.]
	S. B. ROWE.	[SEAL.]
	WM. KOEPSEL.	[SEAL.]
	HARRIS FRANKLIN.	[SEAL.]
	NATHAN E. FRANKLIN.	[SEAL.]
	BURTON A. CUMMINS.	[SEAL.]
	CASSIUS C. BENNETT.	[SEAL.]

STATE OF SOUTH DAKOTA,
County of Hughes, ss:

I, C. B. Collins, do solemnly swear that I will support the Constitution of the United States and that of the State of South Dakota, and that I will faithfully and impartially discharge and perform all the duties of the office of Treasurer of the State of South Dakota.

C. B. COLLINS.

Subscribed and sworn to before me and in my presence by C. B. Collins, this 4th day of Jan'y, A. D. 1905.

D. CORSON,
Judge of the Supreme Court of S. D.

78 STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 17th day of November, A. D. 1904, before me, F. E. Campbell, a Notary Public in and for said county and State, personally appeared C. B. Collins and R. A. Mather, to me personally known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

[SEAL.]

F. E. CAMPBELL,
Notary Public, Brown County, S. D.

Acknouledgment.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 21st day of November, A. D. 1904, before me, F. E. Campbell, a Notary Public in and for said county and State, personally appeared Anna M. Neff, W. B. Miller, K. McKenzie, F. C. Robinson, H. W. Cassels, F. G. Brooberg, Rudolph T. Ebersold, J. L. W. Zietlow, and O. H. Frank, to me personally known to be the persons who are described in and who executed the above and foregoing instrument and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

79 STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 26th day of November, A. D. 1904, before me, F. E. Campbell, a Notary Public in and for said County and State, personally appeared M. F. Bowler, O. F. Edwards, A. Ringger, J. C. Wolfe, F. H. Smith, Virgil Rathbun, C. F. Schinkel, J. D. Jones, and Wm. Bowles, C. W. Kranhold, John Gengerke, C. A. Neuman, and S. J. Griffin, to me personally known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Acknowledgment.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 21st day of November, A. D. 1904, before me, F. E. Campbell, a Notary Public in and for said county and State, personally appeared J. H. Anderson, W. H. Preston, W. S. Streeter, and N. O. P. Synoground, to me personally known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledeged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

80 *Acknowledgment.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 3rd day of December, A. D. 1904, before me, F. E. Campbell, a Notary Public in and for said County and State, personally

appeared W. J. Wegner, C. K. Neff, F. D. James, W. I. Erwin, A. T. Amsden, A. H. Potter, D. H. Hatton, J. T. Hatton, J. D. Reeves, A. A. Miller, and E. J. Mather, to me personally known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown County, S. D.

Acknowledgment.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 17th day of December, A. D. 1904, before me, F. E. Campbell, a Notary Public in and for said county and State, personally appeared Alfred Abraham, Howard W. Cole, Chas. Eygabroad, F. B. Gannon, J. H. Suttle, Wm. Bain, and C. J. McLeoud, to me personally known to be the persons who are described in and who executed the above and foregoing instrument and they acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

81 *Acknowledgment.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this 24th day of December, A. D. 1904, before me, F. E. Campbell, a Notary Public in and for said county and State, personally appeared John Schornack, Charles Marquardt, John E. Townsend, Richard E. Wagner, John A. Abraham, Isaac Ritter, W. J. Rawson, Louis J. Johnson, F. J. Edwards, S. B. Rowe, and Wm. Koepsel, to me known to be the persons who are described in and who executed the above and foregoing instrument and acknowledged to me that they executed the same.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Acknowledgment.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

On this — day of ——, A. D. 190—, before me, a Notary Public in and for said county and State, personally appeared —— ——, to me known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

——— ———,
Notary Public, Brown Co., S. D.

82 *Acknowledgment.*

STATE OF SOUTH DAKOTA,
County of ——, ss:

On this — day of December, A. D. 1904, before me, J. E. Ford, Notary Public in and for said county and state, personally appeared Harris Franklin and Nathan E. Franklin, to me known to be the persons who are described in and who executed the above and foregoing instrument, and acknowledged to me that they executed the same.

J. E. FORD,
Notary Public, Lawrence Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

R. A. Mather, Anna M. Neff, W. B. Miller, K. McKenzie, F. C. Robinson, H. W. Cassels, Rudolph T. Ebersold, J. L. W. Zietlow, and H. O. Frank, being first duly sworn each for himself says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above his debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite their respective names.

R. A. MATHER, Ten thousand ($10,000) Dollars.
ANNA M. NEFF, Six thousand ($6,000) Dollars.
W. B. MILLER, Four thousand ($4,000) Dollars.
83 K. McKENZIE, Ten thousand ($10,000) Dollars.
F. C. ROBINSON, Ten thousand ($10,000) Dollars.
H. M. CASSELS, Ten thousand ($10,000) Dollars.
RUDOLPH T. EVERSOLD, Ten thousand ($10,000) Dollars.
J. L. W. ZIETLOW, Ten thousand ($10,000) Dollars.
H. O. FRANK, Five thousand ($5,000) Dollars.

Subscribed and sworn to before me this 21st day of November, A. D. 1904.

[NOTARIAL SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

M. F. Bowler, O. F. Edwards, A. Ringger, J. C. Wolfe, F. H. Smith, Virgil Rathbun, C. F. Schinkel; J. D. Jones, and Wm.

Bowles, being first duly sworn, each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota; that he is worth the amount set opposite his respective name over and above his debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite his respective name.

M. F. BOWLER, Five thousand ($5000) Dollars.
O. F. EDWARDS, Three thousand ($3000) Dollars.
A. RINGGER, Five thousand ($5000) Dollars.
84 J. C. WOLFE, Five thousand ($5000) Dollars.
F. H. SMITH, Ten thousand ($10,000) Dollars.
VIRGIL RATHBUN, Ten thousand ($10,000) Dollars.
C. F. SCHINKEL, Five thousand ($5,000) Dollars.
J. D. JONES, Five thousand ($5000) Dollars.
WM. BOWLES, Five thousand ($5000) Dollars.

Subscribed and sworn to before me this 26th day of November A. D. 1904.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

C. W. Kranhold, John Gengerke, C. A. Neuman, S. J. Griffin, W. H. Preston, W. S. Streeter, and N. O. P. Synground, being first duly sworn, each for himself, says that he is one of the sureties on the within and foregoing bond, that he is a resident and freeholder of the State of South Dakota; that he is worth the amount set opposite his respective name over and above his debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite his respective name.

C. W. KRANHOLD, Five thousand ($5000) Dollars.
JOHN GENGERKE, Two thousand ($2000) Dollars.
C. A. NEUMAN, Three thousand ($3000) Dollars.
S. J. GRIFFIN, Ten thousand ($10,000) Dollars.
W. H. PRESTON, Five thousand ($5000) Dollars.
85 W. S. STREETER, Three thousand ($3000) Dollars.
N. O. P. SYNOGROUND, Five thousand ($5000) Dollars.

Subscribed and sworn to before me this 26th day of November, A. D. 190-.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

Justification.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

F. G. Brooberg, and J. H. Anderson, being first duly sworn, each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above all his debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite their respective names.

F. G. BROOBERG, Ten thousand ($10,000) Dollars.
J. H. ANDERSON, Ten thousand ($10,000) Dollars.

Subscribed and sworn to before me this 21 day of November, A. D. 1904.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown Co., S. D.

86 *Justification.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

W. J. Wegner, C. K. Neff, F. D. James, W. I. Erwin, A. T. Amsden, A. H. Potter, D. H. Hatton, J. T. Hatton, J. D. Reeves, A. A. Miller, and E. J. Mather, being first duly sworn, each for himself says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above all his debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite their respective names.

W. J. WEGNER, Five thousand ($5,000) Dollars.
C. K. NEFF, Five thousand ($5,000) Dollars.
F. D. JAMES, Five thousand ($5,000) Dollars.
W. I. ERWIN, Five thousand ($5,000) Dollars.
A. T. AMSDEN, Five thousand ($5,000) Dollars.
A. H. POTTER, Five thousand ($5,000) Dollars.
D. H. HATTON, Three thousand ($3,000) Dollars.
J. T. HATTON, Three thousand ($3,000) Dollars.
J. D. REEVES, Three thousand ($3,000) Dollars.
A. A. MILLER, Five thousand ($5,000) Dollars.
E. J. MATHER, Ten thousand ($10,000) Dollars.

Subscribed and sworn to before me this 3rd day of November, A. D. 1904.

[NOTARIAL SEAL.] F. E. CAMPBELL,
Notary Public, Brown County, S. D.

87 STATE OF SOUTH DAKOTA,
County of Brown, ss:

Alfred Abraham, Howard W. Cole, Chas. Eygabroad, F. B. Gannon, J. H. Suttle, Wm. Bain, and C. J. McLeoud, John A. Abraham, being first duly sworn each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above all his debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite their respective names.

ALFRED ABRAHAM, Ten thousand ($10,000) Dollars.
HOWARD W. COLE, Two thousand ($2,000) Dollars.
CHARS. EGGABROAD, Five thousand ($5,000) Dollars.
F. B. GANNON, Forty thousand ($40,000) Dollars.
J. H. SUTTLE, Twenty-five thousand ($25,000) Dollars.
WM. BAIN, Five thousand ($5,000) Dollars.
C. J. McLEOD, Twenty thousand ($20,000) Dollars.
J. A. ABRAHAM, Ten thousand ($10,000) Dollars.

Subscribed and sworn to before me this 17th day of December, A. D. 1904.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown County, S. D.

88 *Justification.*

STATE OF SOUTH DAKOTA,
County of Brown, ss:

John Schornack, Chas. Marquardt, John E. Townsend, Richard E. Wagner, Isaac Ritter, W. J. Rawson, Louis J. Johnson, J. F. Edwards, S. B. Rowe, and Wm. Koepsel, being first duly sworn, each for himself says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above all his debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite their respective names.

JOHN SCHORNACK, Two thousand ($2,000) Dollars.
CHAS. MARQUARDT, Ten thousand ($10,000) Dollars.
JOHN E. TOWNSEND, Ten thousand ($10,000) Dollars.
RICHARD E. WAGNER, Five thousand ($5,000) Dollars.
ISAAC RITTER, Ten thousand ($10,000) Dollars.
W. J. RAWSON, Six thousand ($6,000) Dollars.
LOUIS J. JOHNSON, Five thousand ($5,000) Dollars.
J. F. EDWARDS, Three thousand ($3,000) Dollars.
S. B. ROWE, Three thousand ($3,000) Dollars.
WM. KOEPSEL, Four thousand ($4,000) Dollars.

Subscribed and sworn to before me this 24 day of December, A. D. 1904.

[SEAL.] F. E. CAMPBELL,
Notary Public, Brown County, S. D.

89 *Justification.*

STATE OF SOUTH DAKOTA,
County of Lawrence, ss:

Harris Franklin, and Nathan E. Franklin, being first duly sworn, each for himself, says that he is one of the sureties on the within and foregoing bond; that he is a resident and freeholder of the State of South Dakota, that he is worth the amount set opposite his respective name over and above all his debts and liabilities and exemptions, and that he has property in the State of South Dakota, subject to execution equal to the sum set opposite their respective names.

HARRIS FRANKLIN, Fifty thousand ($50,000) Dollars.
NATHAN E. FRANKLIN, Ten thousand ($10,000) Dollars.

Subscribed and sworn to before me this 30 day of Dec., A. D. 1904.

J. E. FORD,
[SEAL.] *Notary Public, Lawrence County, S. D.*

STATE OF SOUTH DAKOTA,
Office, Secretary of State, ss:

I hereby certify that the within instrument was filed for record on the 7th day of January, A. D. 1905, at 2:40 o'clock P. M. and recorded in Vol. 1, on pages 403 to 413 inclusive, Record of Official Oaths and Bonds of this office.

D. D. WIPF,
Secretary of State.

90 By E. A. PLATTS,
Ass't Secretary.

Justification.

STATE OF SOUTH DAKOTA,
County of Hughes, ss:

Burton A. Cummins and Cassius C. Bennett, being first duly sworn, each for himself, deposes and says that he is one of the sureties in this within and foregoing bond; that he is a resident and freeholder of the State of South Dakota; that he is worth the amount set opposite his respective name over and above all his debts and liabilities and exemptions, and that he has property in the State of

South Dakota, subject to execution, equal to the amount set opposite their respective names.

BURTON A. CUMMINS, Fifteen thousand ($15,000) Dollars.
CASSIUS C. BENNETT, Fifteen thousand ($15,000) Dollars.

Subscribed and sworn to before me this 3d day of January, A. D. 1905.

[NOTARIAL SEAL.] E. J. BINFORD,
Notary Public, Hughes Co., S. D.

File No. 25062.
Box No. 254. Official Bond of C. B. Collins, State Treasurer.

91 STATE OF SOUTH DAKOTA,
Office Sec. of State, ss:

I hereby certify that the within instrument was filed for record on the 7 day of January, A. D. 1905, at 2:40 o'clock P. M., and recorded in Vol. 1, on pages 402 to 413 inclusive. Record of Official Oaths and Bonds of this office.

D. D. WIPF,
Sec. of State.
By E. A. PLATTS,
Ass't Secretary.

The within bond is hereby approved this 7th day of January, 1905.

SAMUEL H. ELROD,
Governor.
D. CORSON,
Presiding Judge of the Supreme Court.
PHILO HALL,
Attorney General.

92 Q. Can you state from memory, Mr. Collins, in what Bank or banks you kept the public money while you were Treasurer of South Dakota?
A. Why, I could state quite a number of them from memory.
Q. Name such as you can remember?
A. Well, there was the First National Bank at Pierre, well two banks at Pierre.
Q. The Pierre National?
A. The one that McClure was in.
Q. That is the Pierre National?
A. The Pierre National.
Q. And the National Bank of Commerce?
A. The National Bank of Commerce, yes sir.
Q. And the First National Bank of Aberdeen.
A. I think it was.
Q. Did you keep some at the First National Bank of Deadwood?
A. Yes sir.

Q. Did you keep some in the American National Bank at Deadwood?

A. I do not recollect. I know there was some in the First National Bank, but I am not positive about the other bank.

Q. Did you keep some in the Chicago Trust and Savings Bank?

A. Yes sir.

Q. And some in the Central Trust Company at Chicago?

A. Yes, sir. The Brown County Bank at Groton, the First National Bank at Groton, and some bank at Brookings, I
93 forget the name.

Q. The Bank at Brookings?

A. Yes, sir.

Q. And some in the Central State Bank of Menno?

A. Yes, sir; for a short time.

Q. Now, referring to the National Bank of Commerce at Pierre, do you remember who was the officer of that Bank that was in charge of it, that managed it at that time?

A. No, sir; I do not recollect.

Q. Are you acquainted with Mr. A. W. Ewert?

A. Yes, sir.

Q. Was *it* he?

A. I know he was interested in the Bank, I do not know whether he was the head officer or what his official capacity has been.

Q. You do not remember then with what person you made arrangements for the deposit of the public money in the National Bank of Commerce of Pierre, South Dakota?

A. No, sir.

Q. Now, what arrangement, if any, did you have with the National Bank of Commerce at Pierre for the payment of interest on any balance of public money deposited in that bank?

A. Well, I will decline to answer that question. And I will state my reasons for so doing. In view of the fact there has never been any Court decision handed down in South Dakota, covering this question, and in as much as there has been opinions from eminent jurists in other states covering the same question, and especially from Colorado where the laws of the State of South Dakota were copied from almost word for word, as cited by the late John L. Pyle, at one time attorney general of the state,
94 paragraphs of this opinion from Mr. Pyle, if I am permitted, I will include in the hearing, or will submit it as a whole. I decline to answer this question for those reasons.

Mr. Caldwell: I do not believe the Court will recognize it as a sufficient reason for your declining to answer.

Q. I will ask you whether, as a matter of fact, the National Bank of Commerce at Pierre, or any one represe-ting them, or any one representing that institution, ever paid you any money or other consideration, as interest, upon the State's money which you deposited in that institution?

A. Well, Going back and relying on this opinion rendered by John L. Pyle, attorney general, wherein he states the State of South

Dakota would have no rights whatever if there was interest received on such money, I decline to answer that for the same reason.

Q. Then, your reason for not answering this question is the statement made by former Attorney General Pyle, to the effect that if interest was paid upon the public money the State was not entitled to that interest?

A. No, not wholly. I deny the State's right in any way to demand a hearing any more than any other individual.

Q. Then, your reason for not answering is your belief the State had not any right to a hearing, is that correct?

A. Other than perhaps criminal prosecution, something of that kind. Outside of that, I deny they have any right whatever.

Q. As the State treasurer of South Dakota, you had complete charge of the public moneys of South Dakota, did you not?

95 A. Under certain restrictions.

Q. And you kept this public money where you chose to keep it, did you not?

A. I did.

Q. At the end of your term, it was your duty, and you did, did you not, turn over the public money to your successor?

A. I turned over the public money and my statement was accepted by the Committee, composed of the Governor, Commissioner of School and Public Lands and the Auditor, I think. May be, the Secretary of State, I do not recollect now. And it was accepted and every penny accounted for.

Q. You do not remember, of course, how much money you received as State Treasurer during your first term?

A. No, sir. The books will show.

Q. You do not remember how much you received as State Treasurer during your second term?

A. No, sir; I have no copies of the books.

Q. But how did the amount that you turned over to your successor compare with the amount you have received as State Treasurer?

A. It must have been the amount. It must have been just the same because the books balanced and the balance was accepted.

Q. Well, did this amount you turned over to your successor, did that include any money that was paid you by the National Bank of Commerce of Pierre, or any other banking interest, as interest on the public funds?

A. I decline to say. What is the question?

(Question read to the witness.)

96 A. No, sir.

Q. Then, you did not account to your successor nor to the State for any interest upon the funds that you had deposited in any of these banks?

A. No, sir.

Q. If you did receive any interest then upon the public funds, you retained that interest yourself, of course, did you not?

A. Well, I decline to answer that question as immaterial.

Mr. Caldwell: I will ask the Commissioner to read the last question, and I insist upon an answer to the question.

(Question read to the witness.)

A. I decline to answer the question as immaterial. That is my statement.

Mr. Caldwell: I now ask the Commissioner to advise the witness it is his duty to answer the questions and that the reason is not a sufficient reason for not answering.

The Referee: It is ordered that the witness answer the question.

A. I have the right, of course, to state my reasons for refusing or denying to answer the question and I think I have the right to follow the only real decision that has ever been thrown upon this question. You have no Court decisions what ever from any source concerning the proposition as submitted by you any where. I have the decisions of the Justices of the State of Colorado, sustaining me in every instance, and the laws of the State of Colorado are absolutely very nearly word for word the same as the laws of the State of South Dakota. And in all of these decisions, they would sustain me
97 in refusing to answer the question. I still refuse to answer.

Q. Don't you recognize that this is a proceeding brought in the Supreme Court of the United States, for the purpose of ascertaining whether or not you had a right to keep the public money. That it is an action brought for the purpose of determining the very question which you say has been decided against us?

A. Yes.

Q. Well, since that is true, even if you do answer the question, don't you recognize the Supreme Court of the United States will know the law, and does know the law, and will hold in your favor, rather than against you, if you are right in your contention?

A. I certainly do. And you also recognize the fact that if criminal proceedings were instituted against me that I would not be required to testify in any way that would hurt my case.

A. Don't you recognize, too, Mr. Collins, that if any criminal proceedings were commenced against you, on account of these transactions, it is outlawed and was outlawed long ago? Don't you recognize that?

A. No, sir; I do not recognize that. I do not know it has outlawed.

Q. Don't you know that the statute of limitations of the State of South Dakota, is all matters of this kind is limited to three years for bringing criminal action?

A. No, sir, I do not know that.

Mr. Caldwell: At this time I wish to state to the record and I say this as Attorney General of South Dakota, in Mr. Collins' presence, and in view of the reasons that he has given for not answering the questions, that any crimes, that Mr. Collins is guilty of, for
98 the wrongful receiving or retaining of interest on the public funds while State Treasurer of South Dakota, have now been

outlawed for the reason that criminal prosecution for all such offenses must be brought within three years after the offense has been committed.

Q. In view of this statement which I have just made to the record, I will ask the witness whether or not he received any money, or other consideration, from the National Bank of Commerce of Pierre, as interest upon the public moneys deposited in that bank by the witness while he was State Treasurer?

A. I refuse to answer either "yes" or "no" on that proposition.

Q. What answer will you give?

A. Simply that it is immaterial. The State has no right to investigate further than the amount of the deposit placed in the bank at that time.

Q. I believe you said you kept some of the public money in the First National Bank of Deadwood, South Dakota, while you were State Treasurer?

A. Yes, sir, I think so.

Q. I will ask you what arrangement or agreement you had with the First National Bank of Deadwood, for the payment of interest on the public funds in that institution?

A. I decline to answer the question for the same reason as advanced before.

Q. What reason was that? Just state the reason please.

A. As set forth.

Q. I will ask you to give the reason specifically if you do
99 not care to answer the question?

A. I gave my reason heretofore and for the same reasons advanced heretofore, and a copy of the proceedings will show.

Mr. Caldwell: I ask the Commissioner to require the witness to answer the question.

The Referee: It is ordered that the witness answer the question.

A. I have *to* right to answer the same as I did before. And that is my answer as advanced to your former question in regard to receiving interest on the money in any bank.

Q. Referring now to the Pierre National Bank, of Pierre, South Dakota, I will ask you what arrangement or agreement, you had with that bank for the payment of state funds, for the payment of interest on state funds, which you deposited with that institution?

A. I decline to answer the question for the same reason advanced before.

Mr. Caldwell: I will ask the Commissioner to require the witness to answer the question.

The Referee: You are ordered to answer the question.

A. That is my answer, and I consider that as an answer to the question.

Q. How much interest did that bank pay you on the public funds?

A. I decline to answer that question. That being absolutely and wholly immaterial.

Q. Referring now to the Central Trust Company of Chicago, Illinois, I will ask you what arrangement or agreement you had with that institution, if any, for the payment of interest on the public funds you kept there deposited?

100 A. I decline to answer that question for the same reason, as advanced before to the other questions.

Mr. Caldwell: I will ask the Commissioner to require the witness to answer the question.

The Referee: It is ordered that the witness answer the question.

A. That is my answer to the question.

Q. You refuse to make any further answer?

A. I do.

Q. Do you refuse to tell me, or to state, at this time, how much interest you did receive on the public funds from the Central Trust Company of Chicago, Illinois?

A. I refuse to consider that feature at all in any way.

Q. You refuse to tell how much interest you received from the Central Trust Company of Chicago on the public funds, do you?

A. I refuse to answer the question in any way regarding the interest, if there was interest, or whether there was or was not interest.

Q. Referring now to the First National Bank of Mitchell, South Dakota, I will ask you whether or not you kept any public funds deposited in that institution while you were State Treasurer?

A. As I recall, I think I did.

Q. Do you remember the officer in charge of that bank with whom you arranged for depositing the money there?

A. No, sir; I do not remember any particular officer.

Q. I will ask you what arrangement or agreement you

101 had with them for the payment of interest on public funds which you deposited there?

A. I decline to answer the question for the same reasons as advanced before.

Mr. Caldwell: I will ask the Commissioner to require the witness to answer the question.

The Referee: The witness is ordered to answer the question.

A. That is my answer to the question.

Q. How much, if any money, or other consideration did the First National Bank of Mitchell pay you as interest upon public funds, or for the use of the public funds, that you deposited with that bank?

A. I decline to answer that question as immaterial.

Q. Referring to the Illinois Trust and Savings Bank, of Chicago, Illinois, I will ask you what arrangement or agreement you had with that institution, if any, for the payment of interest upon the state funds deposited there while you were state treasurer?

A. I decline to answer that question for the same reasons as advanced before.

Q. How much money or other consideration did that bank pay as interest on the public funds while you were state treasurer?

A. I decline to answer the question as immaterial.

The Referee: The witness will answer the question.

A. That is my answer to the question.

Q. Did you receive a salary, Mr. Collins, from any bank or banking institution whatever while you were state treasurer of South Dakota?

A. No, sir.

102 Q. I will ask you, Mr. Collins, if it is not a fact that the Illinois Trust and Savings Bank of Chicago, Illinois, paid you interest on the average daily balances of public money which you had there deposited in excess of $1,000.00 at the rate of two per cent? Is that not true?

A. I decline to answer that question as immaterial, and for the same reasons as advanced before.

Q. I will ask you if it is not a fact that the Illinois Trust and Savings Bank of Chicago, Illinois, paid you as interest upon the public funds there deposited, the sum of $4,259.87, or approximately that sum?

A. I decline to answer the question as immaterial and for the reasons advanced before.

Q. And I will ask you if this sum of $4,259.87 was not paid to you in monthly installments beginning with the 30th day of January, 1903, and ending on the 31st day of December, 1906?

A. I decline to answer the question for the same reason as advanced before.

Exhibit "C" marked for identification.

Q. I show you Exhibit "C," and will ask you if that is not a correct and accurate statement of the several payments that were made to you by the Illinois Trust and Savings Bank as interest upon the State funds which you deposited in that institution while you were State Treasurer of South Dakota?

A. I decline to answer the question as immaterial and for the reason stated.

Mr. Caldwell: I offer Exhibit "C" in evidence.

Mr. Collins: No objection.

(Said Exhibit "C" is as follows:)

103 EXHIBIT C.

Illinois Trust and Savings Bank, Chicago.

Interest Paid on Balances to C. B. Collins, Treasurer State of South Dakota, and Regents of Education.

January 30, 1903	$368.92
February 29, "	183.21

March 30,	"	189.02
April 29,	"	470.09
May 29,	"	226.84
June 29,	"	63.74
July 30,	"	43.73
August 31,	"	42.68
September 29,	"	38.74
October 30,	"	36.88
November 30,	"	35.18
December 30,	"	29.97
January 29,	1904	27.51
February 29,	"	23.23
March 30,	"	18.47
April 30,	"	14.85
May 31,	"	12.60
June 29,	"	6.36
July 29,	"	23.67
August 31,	"	41.82
September 29,	"	40.71
October 31,	"	40.33
November 29,	"	33.32
December 30,	"	28.55
104		$2,043.42
January 31,	1905	$24.99
February 28,	"	21.21
March 31,	"	17.37
April 28,	"	15.07
May 31,	"	13.10
June 29,	"	5.64
July 31,	"	27.51
August 31,	"	44.99
September 30,	"	40.44
October 31,	"	81.70
November 29,	"	238.24
December 30,	"	287.02
January 30,	1906	51.72
February 28,	"	119.01
March 30,	"	57.87
April 30,	"	73.69
May 31,	"	124.66
June 30,	"	168.22
July 31,	"	208.00
August 31,	"	188.87
September 28,	"	129.25
October 31,	"	140.66
November 30,	"	74.96
December 31,	"	62.19
		$4,259.80

105 Q. I will ask you, Mr. Collins, if it is not a fact that the Central Trust Company of Illinois paid you interest at the rate of three per cent per annum upon the balances of State funds which remained with them continuously during the month? If they did not pay you interest at that rate upon all money which you had there deposited while you were State Treasurer?

A. I decline to answer the question as immaterial.

Q. I will ask you if it is not a fact that the Central Trust Company of Illinois paid you $2,223.94, as interest upon the State money there deposited for the year 1903?

A. I decline to answer the question.

Q. And the sum of $4,140.36 for the year ending 1904?

A. I decline to answer the question.

Q. And the sum of $9,748.17 for the year 1905?

A. I decline to answer the question.

Q. And the sum of $6,605.97 for the year 1906?

A. I decline to answer the question.

Q. And the sum of $269.26 for the first few days of January, 1907?

A. I decline to answer the question for the reasons stated before.

Q. I will ask you if it is not a fact that the Central Trust Company of Chicago paid you $22,987.70 as interest upon State funds which you kept on deposit in that institution while you were State Treasurer?

A. I decline to answer the question for the same reasons as before.

106 Q. Now, I will ask you if it is not a fact that the National Bank of Commerce of Pierre, South Dakota, paid you $1,992.32 as interest upon the public funds of South Dakota which you kept deposited in that institution while you were State Treasurer?

A. I decline to answer the question for the same reasons as before.

Q. I will ask you if the National Bank of Commerce of Pierre did not pay you $722.57 as interest on the State funds for the year 1903?

A. I refuse to answer the question for the same reasons.

Q. And the sum of $298.50 as interest upon the State funds for the year 1904?

A. I refuse to answer for the same reasons.

Q. And the sum of $526.60 as interest upon the State funds for the year 1905?

A. I refuse to answer for the reason as before.

Q. And the sum of $418.75 as interest upon the State funds for 1906?

A. I refuse to answer the question for the same reason as stated before.

Q. I will ask you if the First National Bank of Deadwood did not pay the sum of $634.66 as interest upon the State funds for South Dakota which you had deposited in that institution for the years 1905 and 1906?

A. I refuse to answer the question for the same reason as advanced before.

Q. I will ask you, Mr. Collins, if the Pierre National Bank of Pierre, South Dakota, did not pay you $495.35 as interest on
107 the State funds of South Dakota which you had deposited in that institution for the year 1903?

A. I refuse to answer the question for the same reason.

Q. And the sum of $199.77 for 1904?

A. I refuse to answer for the same reason.

Q. And the sum of $324.70 for 1905?

A. I refuse to answer for the same reason.

Q. And the sum of $403.14 for 1906?

A. I refuse to answer for the same reason.

Q. And if that bank did not pay you in all, as interest on the State funds of South Dakota, which you kept deposited in that institution, in the sum of $1,322.96?

A. I refuse to answer the question for the same reason.

Q. Now, I will ask you if the First National Bank of Mitchell did not pay you the sum of $844.10 as interest on the State funds of South Dakota which you had deposited in that institution while you were State Treasurer?

A. I refuse to answer for the same reason.

Q. I will ask you if the First National Bank of Mitchell, South Dakota, did not pay you the sum of $844.10, the total sum of $844.10 as interest upon the State funds as follows: $250.00, January 11, 1905; $300.00, January 11, 1906, and $294.10, January 12, 1907.

A. I refuse to answer the question for the same reasons as advanced before.

Q. Did you keep any public account, that is any record in your office as State Treasurer of South Dakota, of any money that was paid to you as interest upon the public funds?

108 A. I refuse to answer that question most emphatically.

Q. What reason do you give for refusing to answer?

A. For the same reasons as advanced before, and for the reason that the State of South Dakota has never established a right to receive the interest if there was any.

Q. Don't you recognize we are just trying to do that now?

A. You have got to establish that right, but you certainly do not expect me to establish that right for you.

Q. Did you make any report to the Governor of South Dakota, or any official of South Dakota, in connection with any report as State Treasurer, or otherwise, of moneys which you received as interest upon the public funds while you were State Treasurer.

A. I made no report to the Governor of any interest on any money.

Q. You did not keep any public account of such interest did you?

A. I certainly did not.

Q. Well, did you keep a private or personal account of money that was paid you by the banks for the use of the public funds?

A. I refuse to answer the question as immaterial and for the same reason as advanced before.

Q. How were the funds deposited in the different banks by you while you were State Treasurer?

A. They were deposited in the name of the State of South Dakota and they were open to checks or drafts at any or all times,
109 and never was there a dollar of the State funds tied up that was not available at any moment.

Q. They were deposited in your name as State Treasurer, were they not?

A. As State Treasurer; yes, sir.

Q. Do you remember that before the commencement of this action a demand was made upon you by A. W. Ewert the then State Treasurer of the State of South Dakota for the sum of $32,042.50 which he claimed you had collected and retained as interest upon the State funds while you were State Treasurer?

A. I do not remember the amount. I presume that is the exact amount. I could not say, but I presume it is.

Q. And you entirely ignored that demand, did you not?

A. I did.

Thereupon said witness was excused for the time being.

Exhibit "1" marked for identification.

Mr. Collins: I offer in evidence Exhibit "1."

Mr. Caldwell: No objection.

(Said Exhibit "1" is as follows:)

110 EXHIBIT "1."

PIERRE, February 2nd, 1899.

Honorable Andrew E. Lee, Governor of South Dakota.

DEAR SIR: I beg to acknowledge receipt of your communication of January 23rd, relating to retiring Treasurer, K. G. Phillips, and enclosing portions of your message to the Legislature, together with report of Public Examiner, Maris Taylor, which was included in your report to the Legislature, and also enclosing a supplemental report of Maris Taylor State Public Examiner, bearing date January 21st, 1899. After receiving this communication from you, I called at the Executive Chamber and called your attention to Sections 95 and 96 of the Compiled Laws, and also called your attention to the fact that your communication to me contained no specific request that I take any action in the matter. At that time you suggested to me that if upon further examination of the communication, I deemed that it contained no sufficient request that I communicate my conclusions to you on that subject in writing.

Section 95, to which reference is made above, relating to the duties of the Attorney General, provides among other things: "He shall

appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court in which the state shall be interested as a party, and shall also when requested by the governor or either branch of the Legislature, appear for the state and prosecute and defend in any court or before and officer in any cause or matter, civil or criminal, in which the state may be
111 a party or interested," and section 96 of which reference is above made provides: "It shall be the duty of the attorney general at the request of the governor, auditor, or treasurer, to prosecute any official bond or any contract in which the state is interested upon a breach thereof and to prosecute or defend for the state all actions, civil or criminal relating to any matter connected with either of their departments."

In view of the fact that any action by this office in relation to the subject of your communication would involve proceedings in the Circuit Courts of this state, and probably in courts in other states, I think the statute contemplates that before commencing proceedings I shall be requested to do so either by the governor or either branch of the Legislature, or by the auditor or treasurer. In this particular case, I think there are special reasons for requiring this request before commencing any proceedings whatever, which are found in the fact that from your communication it appears that on October 17th, 1898, the deposits of the state treasurer were in nine different banks and in three different states, and any vigorous prosecution of the matter would necessarily involve the taking of testimony and probably supplemental suits to obtain discovery in at least two of the states. Furthermore, it is very likely, though your communication does not disclose whether that would be true or not, that deposits, during the four years Mr. Phillips held the funds, may have been contained in still other banks, located at different places and the expense of ascertaining all the facts necessary to a proper protection of the rights of the state will involve a large expense, and more than the ordinary expenses which have been appropriated by
112 the legislature for the use of this office, and it would be futile, in my judgment, to commence any proceedings without ample means to prosecute the case vigorously and take whatever steps were necessary to ascertain the facts in reference to the payment of interest, whether in the state of South Dakota or elsewhere.

There is another view of the matter which I wish to lay before you at this time, as it may have some influence and some bearing upon your decision, or the decision of the legislature, to make a request for the institution of proceedings against Mr. Phillips and his bondsmen for the recovery of interest which he may have received upon the state deposits.

In your communication to me you cite Section 11, of Article 11, of the Constitution of the State, which reads as follows: "The making of profit, directly or indirectly, out of state, county, city, town or school district money or using the same for any purpose not authorized by law, shall be deemed a felony and shall be punished as provided by law." This provision of the Constitution of the

State of South Dakota is an exact duplicate of Section 13, Article 10 of the Constitution of the State of Colorado, except the words "By any public officer" are incorporated into the section in Colorado and not incorporated into the section of our Constitution the provision of the Constitution of the state of Colorado being as follows: "The making of profit, directly or indirectly, out of state, county, city town or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law."

In the case of the State vs. Walsen, 17 Col. 170, decided in
113 1892, the Supreme Court of Colorado after an elaborate discussion in which both the state and the treasurer were represented by able counsel, and by unanimous decision of the court, Chief Justice Hayt, delivering the opinion of the Court, decided that where the state treasurer had received interest upon public money contrary to this provision of the Constitution, the state had no cause of action and could not require the interest thus received from the treasurer. On page 174, of the opinion, the Court says: "The Constitution declares that the making of profit by him, either directly or indirectly, out of the public funds shall be deemed a felony and punished as provided by law." This provision recognizes that a profit may, in fact be made by the treasurer, although it declares the making thereof a felony to be punished as provided by law. It does not provide that the profit to be made shall inure to the benefit of the state. By the next succeeding section, however, power is expressly lodged in the legislature to make all reasonable and proper regulations regarding the safe keeping and management of the public funds. Ample provision in the premises is here conferred upon the legislature. It was not until subsequent to the expiration of Walsen's term of office that the general assembly exercised this power.

The continued neglect to act in the premises was clearly not the result of an oversight on the part of the lawmaking department of the government. It was called to the attention of the house of representatives by this court in an opinion in 1869 in response to a resolution relating to House Bill No. 349, Sec. 12, Colo. 395. The power of the legislature was pointed out at that time and its duty in reference thereto was suggested. It was certainly not then
114 contemplated that the treasurer could be held liable in the state that law was then to be found.

The intention of that legislature upon this subject will be apparent from a glance at the act in reference to public funds passed at the session. See Session laws 1889, p. 297. By this act all public funds of corporate subdivisions of the State were provided for with much particularity the state treasurer and the funds of the state alone being excepted.

That this omission was purposely made is apparent from the circumlocution employed to cover all other offices and all other public funds. The first section of said act commences as follows:

"If any officer appointed or elected by virtue of the constitution

of this state, or any law thereof, as an officer, agent or servent of an incorporated city, town municipal township, school district or county, or other subdivision of this state, shall convert to his own use in any way whatever, or shall use by way of investment in any kind of property or merchandise, or shall make way with or secrete any portion of the public funds or moneys * * *"

Passing on to the third section we find among other things therein provided, the following with reference to the recovery of benefits * * * "but the person or persons, body or bodies corporate, or other association, shall be liable to the county, city, town, township or school district where funds are deposited, in an action for the recovery of all such benefits or advantages as would, by the terms of such contracts or agreement, have accrued, to such officer, agent or servant; and payment to the officer, agent or servant shall not protect the person or persons, body or bodies, corporate, or other association, against an action of recovery brought by the county, town, township or school district whose funds are so deposited.

115 It is plain that the legislature for reasons best known to the members of that body was not then in favor of giving to the state a right of action against the state treasurer for interest received upon state funds. This was undoubtedly a proper subject of legislation, and whatever may be the private views of the members of this court as to the liability of such legislation it must be remembered that it is the province of the courts to declare the law and not to make it.

The eighth general assembly made provision for the payment to the state of all interest collected upon the money belonging to the state, and at the same session doubled the salary of the treasurer, this is the first legislation upon the subject of such interest to be found in our statutes. Session Laws 1891, pp. 186, 198.

From what has been said, it is apparent that both the legislative and judicial departments of the government have construed the constitution as requiring additional legislation, in order that the state could recover interest * * *."

In the State of Georgia the Constitution, Section 9 of Article 7, provides as follows: "The receiving, directly or indirectly, by any officer of the state or county, or member or officer of the General Assembly or any interests, profits or perequisites arising from the use or loan of public funds in his hands, or moneys to be raised through his agency for the state or county purposes, shall be deemed a felony and punishable as may be prescribed by law, a part of which punishment shall be a disqualification from holding office."

116 In the case of Renfroe, et al., vs. Colquitt, Governor, 74 Ga., 618, The Supreme Court of Georgia, Blandford, Justice decided that where the state treasurer has received interest on public money in violation of this provision of the Constitution of the state that the state had no right of action against the treasurer or his bondsmen for the recovery of interest thus unlawfully received by the treasurer, and on page 624 the court says, referring to the interest thus received, "for such money so received by the treasurer

there can be no recovery on his official bond against him and his securities * * *" It will be observed that the Colorado decision places some stress upon the condition of the statutes of that state, and the fact that legislation had been had making the county treasurers liable for such interest and neglecting to make state treasurers liable.

Chapter 152 of the Session Laws of 1895 clearly contemplates that the treasurer shall keep the public money in banks and provide for making certain reports to the governor; also provides that the banking institutions where the public money is kept shall make reports to the Governor but does not make any provision for the treasurer paying into the state treasury any interest he may have received either on time deposits or deposits subject to check, though it contemplates that he may keep his deposits in either way. In 1897, the legislature by Chapter 104 and by Chapter 106 undertook to make provision for the safe keeping of public funds. By section 4 of Chapter 104 they expressly provided for the liability of the county treasurer and his bondsmen for the profits on the unlawful use of such funds. The section reads as follows: "The
117 making of profit, directly or indirectly by the county treasurer out of money in the county treasury, the custody of which the treasury is charged with, by loaning or depositing the same in any manner, or the renewal of the county treasurer or by his consent, of such money or a part thereof out of the vault of the treasurer's department, or the legal depositary of the same, except for the payments of warrants legally drawn for the purpose of depositing the same in banks elected as depositaries under the provisions of this act, shall be deemed guilty of a felony, and upon conviction thereof shall be subject to punishment in the state penitentiary for a term of not more than two years or a fine of not exceeding five thousand dollars ($5,000.00) and shall also be liable under and upon his official bond for the profits realized by such unlawful using of such funds." but Chapter 106, which relates to state treasurers merely provides that the treasurer may in his discretion, as soon as practicable after the passage of the act, and from time to time, designate depositaries of public money. Section 5 of this act, omits to provide that the treasurer may in his discretion, as soon as practicable after the passage of the act, and from time to time, designate depositaries of public money. Section 5 of this act omits to provide that the profits received on such money shall be turned into the state treasury. Section 8 of Chapter 104, is careful to provide that when a county treasurer deposits this money in a depositary under the provisions of the act that he and his bondsmen shall be released from liability for the money so deposited, but Section 7 of Chapter
106, relating to state treasurer is careful to provide that the
118 state treasurer and his bondsmen shall not be released from any liability on account of depositing money in depositaries selected by him, so that the remarks of the Supreme Court of Colorado in reference to the distinction the legislature evidently intended between the liability of the county treasurer and his bondsmen and

the liability of the state treasurer and his bondsmen are peculiarly applicable to the condition of affairs in this state, and that Court says: "That this omission was purposely made is apparent from the circumlocution to cover all other offices and all other public funds."

The Supreme Court of Wisconsin in a very able and elaborate opinion in the case of the State vs. McFetteridge, 84 Wis. 473, decided that the state treasurer was liable to the state upon his official bond for interest received by him upon the public money. The case was argued with great ability upon both sides by men who are recognized as being among the ablest lawyers in the United States, and I think their briefs cover every case decided both in this country and in England upon the question up to that time, but in the Constitution of Wisconsin, I do not find any provision corresponding with section 11 of Article 11, of the Constitution of this state. It was earnestly contended in that state that the deposit in the banks of the funds was contrary to law, and that the treasurer was required to keep the specific funds which he received in payment of taxes and public dues in the office, and that he had no right to receive checks and drafts, but the Supreme Court decided that he had the right to keep the funds in the banks; that the title to the money was in the state; that the title to the deposit was in the state, and it further held that the treasurer has a right to make a contract for the payment 119 of interest upon such deposits. On page 508, the Supreme Court says: "The authority to contract for interest on such deposits is as broad as the right to make them for the statutes contain no restriction in the matter of such interest". Clearly the statutes in this state do not allow a contract to be made for the payment of a profit upon the public funds by the state treasurer. In that state, there was also a statute prohibiting the treasurer from making an investment of public funds without the approval of the governor, and on page 516, the Supreme Court of Wisconsin says: "We are of the opinion, therefore, that in making the deposits in question with banks, Treasurer McFetteridge did not invest the state funds, and hence that he did not thereby violate the statutes which prohibited him from doing so". On page 517 of the opinion the court in summing the matter up says: having determined that the public funds which came to the hands of Treasurer McFetteridge belonged to the state, and that he violated no law when he deposited such funds in banks and stipulated for and received interest thereon, we are next to determine the third and last proposition or hypothesis of the defendants", which was that "any interest he may have realized on such deposits belonged to him individually", and the court having decided that the deposit was legal that the same inured to the benefit of the state. In this case the Supreme Court of Wisconsin reviews the Colorado case above cited and in reviewing it the Supreme Court of Wisconsin says, (referring to the Colorado statute) "The act industriously excludes state treasurers from its requirements and penalties", because it does as the court held that the state had no right of action against the state treasurer and of course none

against the sureties on his official bond to recover the interest
120 received and retained by him to his own use on such deposits of the public funds. This ruling alone was necessarily decisive of the case. Because we have no such statute in this state the case in that aspect of it does not aid us in the determination of the present case.

In the Wisconsin case, they also review the case of Renfroe vs. Colquitt, Supra, and say "If we read the opinion of the majority of the court correctly, it was held that it appeared from the complaint that, in making such deposits of the public funds, the treasurer violated a penal statute of the state, and that, in the absence of any statute entitling the state to the interest on such deposits the state could not maintain an action therefor on the official bond of the treasurer, for the reason, that having received the money claimed through the instrumentality and by the means of an illegal and penal act, the treasurer did not receive the same by virtue of his office." Thus it will be seen that the Supreme Court of Wisconsin does not undertake to say that the decision in the Colorado case and the Georgia case was not correct, considering the constitution and the laws of those states, but distinguishes the Wisconsin case from the Georgia and Colorado cases on account of a difference in the statutes relating to the liability of the treasurer and his bondsmen and in relation to the penal character of the act of the treasurer in receiving interest on public funds.

There are other cases in Indiana and in Kentucky, in perhaps some other states. See 36 Ind. 347; 53 Ind. 331; 79 Ind. 270 and 17 S. W. 737, a Kentucky case, which held that the state is not entitled to interest upon the public money deposited by the treasurer because it is held that the legal title to the money is in
121 the treasurer and not in the state. It does not seem to me, however, that this position is tenable. It seems to me that legal title to the money in cases of this character is in the state, and not in the public official who may be, for the time being, the custodian thereof. However, section 173 of the Constitution of Kentucky reads as follows: "The receiving, directly or indirectly by any officer of the Commonwealth, or of any county, city or town, or members or officers of the General Assembly, of any interest, profit or prerequisites arising from the loan or use of public funds in his hands, or moneys to be raised through his agency for state, city, town, district or county purposes shall be deemed a felony. Said offense shall be punished as may be prescribed by law, a part of which punishment shall be disqualification to hold office", which you will observe is not materially different from our own Constitution, and under it the Court of appeals of Kentucky decides that the treasurer is not liable for interest he had received upon public money.

The United States Supreme Court in the case of United States vs. Mosby, 133 U. S. 273, decided that interest on public money deposited by United States Consul belonged to the United States and not to the Consul. They make no discussion, however of the proposition, and it is only a small item in a long accounting and it is difficult to tell whether they base it upon a statute of the United States or upon a general proposition of law.

There may be some other cases and some other authorities upon this question, but the foregoing are representative and include, I think, all the cases decided in the United States in the courts of last resort which may be considered squarely in point upon the
122 legal questions involved in whatever prosecutions may be determined upon an account of the evidence stated in your communication.

For the purposes of this communication I assume that all of the facts stated in your communication of January 23rd are true, and that a proper investigation in a court of law would disclose that the treasurer had in fact received interest upon the deposits made by him in the various banks.

I merely draw your attention to the above authorities in order that you may see, and if you see fit to lay this communication before the Legislature, that they may see, the difficulties in the way of any prosecutions or any actions which may be brought for the recovery of the interest alleged to have been received by the treasurer, and in order that you, or either branch of the Legislature may consider these matters in deciding whether you will request this office to institute suits for the recovery of the interest or not.

If after going over this subject either you or either branch of the legislature makes the request that this office will do all in its power to recover to the state any interest that may have been received by Mr. Phillips during his incumbency in the office of the state treasurer and protect the rights of the state in the premises, and will do everything that can be done by us in carrying forward any such litigation as you may deem wise to request, to a successful termination.

Respectfully submitted,
(Signed) JOHN L. PYLE,
Attorney General.

123 CHICAGO, ILL., Dec. 10, 1917.

C. C. Caldwell, Attorney General of the State of South Dakota, appearing for the plaintiff, and there being no appearance on the part of the defendant, the following proceedings were had:

J. I. COOPER, being called as a witness on behalf of the State of South Dakota, was first duly sworn to testify the truth, the whole truth and nothing but the truth, and testified as follows:

Direct examination.

By Mr. Caldwell:

Q. You may state your name?
A. James I. Cooper.
Q. What is your office with the Illinois Trust & Savings Bank?
A. Cashier.
Q. What was your official connection with that bank in the years 1903, 1904, 1905 and 1906?
A. Assistant Cashier.

Q. Have you now access to the books of the Illinois Trust and Savings Bank?

A. I have.

Q. Were you personally acquainted with Charles B. Collins, in 1903, 1904, 1905 and 1906?

A. I was not.

Q. You have never been personally acquainted with him?

A. Never.

Q. Did Mr. Collins, as State Treasurer, have an account with the Illinois Trust and Savings Bank during any part of the years
124 1903, 1904, 1905 and 1906?

A. He did.

Q. You get your information as to this from the books of the institution, do you?

A. I do.

Q. Can you furnish a statement showing the quarterly balances that Mr. Collins kept in the Illinois Trust and Savings Bank?

A. I can.

Exhibit "D" marked for identification.

Exhibit "E" marked for identification.

Q. I show you Exhibit "D" and ask you if that is such a statement?

A. It is.

Q. Then, the money represented by that statement was deposited in whose name?

A. In the name of Charles B. Collins, Treasurer of the Regents of Education.

Q. And these several sums indicated in this statement show the balances on the dates indicated?

A. Yes, sir.

Q. Now, I show you Exhibit "E" and ask you what that is?

A. That is, with the exception of the first item, of $125,000.00 under date of October 23, 1905, — it represents the balance in the bank on the dates mentioned.

Q. In whose name?

A. In the name of C. B. Collins, State Treasurer of South Dakota.

Mr. Caldwell. I offer Exhibits "D" and "E" in evidence.

125 (Said exhibits are as follows:).

EXHIBIT "D."

C. B. Collins, Treasurer, Regents of Education—Statement of Commercial Account Showing Balances Each Quarter:

1903.		
Jan. 10th	Account opened with deposit of	$13,538.32
Mar. 31st	Balance on hand	9,982.50
June 30th	" "	3,388.46

Sept. 30th	"	"	23,823.25
Dec. 31st	"	"	17,266.70
1904			
March 31st	"	"	10,455.20
June 30th	"	"	3,228.74
Sept. 30th	"	"	24,104.13
Dec. 31st	"	"	15,648.62
1905			
March 31st	"	"	9,637.84
June 30th	"	"	3,129.80
Sept. 30th	"	"	24,318.71
Dec. 31st	"	"	17,056.33
1906.			
March 31st	"	"	10,455.42
June 30th	"	"	2,796.60
Sept. 29th	"	"	29,840.54
Dec. 31st	"	"	21,424.29
1907.			
January 4th. Account closed with this balance			21,424.29

126 EXHIBIT "E."

C. B. Collins, State Treasurer, South Dakota.

State of Commercial Account Showing Balances Each Quarter.

1905.			
Oct. 23rd	Account opened with deposit of		$125,000.
Dec. 31st	Balance on hand		212,639.63
1906.			
Mar. 31st	"	"	37,279.65
June 31st	"	"	116,275.59
Sept. 30th	"	"	58,563.82
Dec. 24th	Account closed with this balance		8,000.00

127 Q. Now, what, if any, interest was paid upon the deposits kept by Mr. Collins, in his name, as State Treasurer, and as Treasurer of the Regents of Education?

A. Interest was payable at the rate of two per cent per annum, on average balances in excess of $1,000.00 per day.

Q. And when was that interest paid, at what intervals?

A. At the end of each six months.

Q. And to whom was that interest paid?

A. The Security Bank of Minnesota.

Q. For Mr. Collins?

A. That is what I do not know. We do not seem to have any record as for whom it was to be paid.

Q. Where is the Security Bank of Minnesota?

A. I think at Minneapolis, Minnesota.

Q. You may state, if you can, how the remittances were made by

the Illinois Trust and Savings Bank to the Security Bank of Minnesota?

A. By our Cashier's checks.

Q. How much interest was paid on the account that C. B. Collins kept in your bank, as State Treasurer and his account as Treasurer of the Regents of Education?

A. The sum of $4,259.80.

Q. Have you a statement showing the amount of this interest, and the times when paid, and the installments in which it was paid?

A. I have.

Q. Will you produce it?

A. Yes, sir.

Q. I show you Exhibit "C," and ask you if that is such
128 statement?

A. It is.

Q. Then, these several items on Exhibit "C," beginning with the first one, $368.92, and on through to the last one, December 31, 1906, $62.19, was paid by this bank upon this Collins account at the times indicated, is that correct, through the Security Bank of Minnesota?

A. They were.

Q. This interest that you say was paid in the form of cashier's checks, payable to the order of Security Bank of Minnesota, I will ask you what was done with those cashier's checks by your institution?

A. They were mailed to C. B. Collins, Groton, South Dakota.

Q. Who was the cashier of the Illinois Trust and Savings Bank, at the time to which you have just referred?

A. Mr. B. M. Chattell.

Q. Is he living now?

A. He is not.

Q. Did you personally make the arrangement or agreement, or any arrangement or agreement with Mr. Collins for the payment of interest upon these public funds?

A. I did not.

Q. Do you know, and if so state, what, if any, officer of this bank made such an arrangement or agreement?

A. I heard B. M. Chattell did.

Q. Then, so far as you know, no one else connected with this bank would have personal knowledge of the making of such agreement?

A. He would not.

Q. Did Mr. Collins have any personal account in the Illi-
129 nois Trust and Savings Bank during the time referred to?

A. He did not.

Q. The only accounts that stood in his name were these two, the C. B. Collins account as State Treasurer and as Treasurer of the Regents of Education?

A. That is correct.

Q. I will ask you if it is the custom of your bank now, and was

the custom and practice during the time referred to, to keep a record of the payments of interest upon deposit books of the bank?

A. It is and was.

Q. And the testimony that you have given as to the payments of these several sums of interest is based upon these records that were kept at that time?

A. They are.

Mr. Caldwell: I offer Exhibit "C" in evidence.

(Said Exhibit is as follows:)

130 EXHIBIT "C."

Illinois Trust and Savings Bank, Chicago.

Interest Paid on Balances to C. B. Collins, Treasurer State of South Dakota and Regents of Education.

January 30,	1903	$368.92
February 27,	"	183.21
March 30,	"	189.02
April 29,	"	470.09
May 29,	"	226.84
June 29,	"	63.74
July 30,	"	43.73
August 31,	"	42.68
September 29,	"	38.74
October 30,	"	36.88
November 30,	"	35.18
December 30,	"	29.97
January 29,	1904	27.51
February 29,	"	23.23
March 30,	"	18.47
April 30,	"	14.85
May 31,	"	12.60
June 29,	"	6.36
July 29,	"	23.67
August 31,	"	44.82
September 29,	"	40.71

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October 31,	1904	$40.33
November 29,	"	33.32
December 30,	"	28.55
		$2,043.42
January 31,	1905	$24.99
February 28,	"	21.21
March 31,	"	17.37

April 28,	"	15.07
May 21,	"	13.10
June 29,	"	5.64
July 31,	"	27.51
August 31,	"	44.99
September 30,	"	40.44
October 31,	"	81.70
November 29,	"	238.24
December 30,	"	287.02
January 30,	1906	51.72
February 28,	"	119.01
March 30,	"	57.87
April 30,	"	73.69
May 31,	"	124.66
June 30,	"	168.22
July 31,	"	208.00
August 31,	"	188.87
September 28,	"	129.25
October 31,	"	140.66
November 30,	"	74.96
December 31,	"	62.19
		$4,259.80

132 WILLIAM DAWES, being called as a witness on behalf of the State of South Dakota, was first duly sworn to testify the truth, the whole truth, and nothing but the truth, and testified as follows:

Direct examination.

By Mr. Caldwell:

Q. What official connection have you with the Central Trust Company?

A. I have been the cashier of the Central Trust Company since the date of its organization, and vice-president and cashier since about January 1, 1912.

Q. What was your connection with that bank during the years 1903, 1904, 1905, and 1906?

A. Cashier.

Q. Were you personally acquainted with Charles B. Collins, formerly state treasurer of South Dakota?

A. I met him once or twice when he was in Chicago.

Q. I take it that was while he was State Treasurer, he kept an account of State funds in your bank, is that correct?

A. Yes, sir; he had an account which we carried on our books under the title "C. B. Collins, State Treasurer."

Q. When was that account opened?

A. That was opened March 28, 1903, that was the first deposit.

Q. And when was it closed?

A. The account was closed January 4, 1907.

Q. Did Mr. Collins, under that name or any other name, have any other or different accounts in your bank during that time?

A. Not to my knowledge.

133 Q. Was Mr. Collins an officer of the bank during any of that time?

A. Not of this bank.

Exhibit "F" marked for identification.

Q. I show you Exhibit "F," and will ask you if your prepared that, or whether it was prepared under your direction?

A. This is an exhibit, apparently.

Q. Did you prepare it?

A. This was prepared under my direction.

Q. What is it?

A. This is a statement of the balances as shown by our books, of the account of Charles B. Collins, State Treasurer, on the dates specified.

Q. Did you personally make the arrangement or agreement with Mr. Collins for the deposit of these funds at the time the account was opened, or at any time?

A. No, sir.

Q. Who did?

A. To the best of my recollection, all of the arrangements were made, regarding this account, on behalf of the bank by Mr. A. Uhrlab, vice-president of the bank at that time, or one of the vice-presidents of the bank at that time.

Q. Is he one of the vice-presidents of the bank now?

A. No, sir; he is no longer connected with the bank.

Q. Where does he live now?

A. His home at the present time is in Pasadena, California.

134 Q. Where did you get the figures or data from which you made this Exhibit "F"?

A. That was taken off our day book.

Q. Those books are under your supervision and control?

A. Yes, sir; they are.

Q. And the books are all in the bank now?

A. They are in our possession. They are in the bank or in the warehouse.

Q. It was and is now the custom to keep a record in your books of any payments of interest made on account of deposits with you, is that true?

A. That is our practice, but it was not followed entirely in this case.

Q. But did the bank pay interest upon this C. B. Collins account?

A. Yes, sir.

Q. Have you in the books of his account any notation or memo-

randa of any agreement between the bank and C. B. Collins as to the interest that should be paid?

A. Yes, sir.

Q. Will you produce that?

(Witness produces book.)

Q. What is that? That is, where does it appear on your books?

A. This appears on a small memoranda book in which were entered special interest arrangements with depositors, an individual ledger.

Q. Is that book paged?

A. No, sir; it is indexed.

135 Q. And this memoranda appears under what name if any?

A. The memoranda is under "P", indexed under "P" and one "Par. Treasurer of South Dakota".

Q. Who made that entry or memorandum?

A. The handwriting indicates it was made by Charles P. Wegner, assistant cashier of the bank at that time.

Q. You may read that, if you will, that memoranda of the conditions?

A. "Treasurer of South Dakota. Don't credit interest. Make checks favor of Security Bank of Minnesota, and mail same to C. B. Collins, Groton, So. Dak., in envelope marked 'personal'. The rate is three percent, less $1,000.00 per day. A. Uhrlab 4-28".

Q. Now, what did the bank do or how did the bank pay the interest which was paid on this account in reference to this memoranda you have just read?

A. The interest was paid in accordance with the instructions in the memoranda, being in the form of cashier's checks, payable to the order of the Security Bank of Minnesota.

Q. Have you these checks?

A. Yes sir.

Q. I will ask you to read the amounts of those several checks and their dates beginning with the first one?

A.

Apr. 29, 1903	$480.58
May 28, 1903	492.66
June 29, 1903	500.79
July 30, 1903	72.08
August 28, 1903	55.80

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September 29, 1903	$167.83
October 30, 1903	170.47
November 28, 1903	126.58
December 29, 1903	157.15
January 29, 1904	160.68
Dec. 29, 1904	63.20
Mar. 30, 1904	216.56
Apr. 29, 1904	905.89

May 28, 1904	700.43
June 28, 1904	644.71
July 28, 1904	219.70
Aug. 30, 1904	119.02
Sept. 28, 1904	156.00
Oct. 28, 1904	265.40
Nov. 29, 1904	317.10
Dec. 29, 1904	371.67
Jan. 30, 1905	612.49
Feb. 27, 1905	197.26
Mar. 29, 1905	179.67
Apr. 28, 1905	907.22
May 29, 1905	1080.15
June 29, 1905	1209.35
July 28, 1905	855.54
Aug. 30, 1905	808.43
Sept. 29, 1905	872.19
Oct. 27, 1905	1130.68
Nov. 28, 1905	909.20
Dec. 28, 1905	985.99
Jan. 30, 1906	709.81
Feb. 27, 1906	460.52

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Mar. 30, 1906	$564.33
Apr. 28, 1906	882.44
May 29, 1906	1056.13
June 28, 1906	958.25
July 28, 1906	355.97
Aug. 29, 1906	169.81
Sept. 28, 1906	195.28
Oct. 29, 1906	426.33
Nov. 28, 1906	440.47
Dec. 28, 1906	386.63
Jan. 11, 1907	269.26

Q. What is the total of those checks you have just read, Mr. Dawes?

A. $22,987.70.

Q. When were these several payments made with reference to dates of the checks?

A. On the dates of the several checks.

Q. What were these payments for?

A. These checks were in payment of interest, upon the balance in the account of C. B. Collins, State Treasurer.

Q. What, if anything in addition to these checks did you pay Mr. Collins for the use of the money or interest on this money?

A. Nothing.

Q. Nothing?

A. No, sir.

Q. Do any of these checks, Mr. Dawes, bear the signature of Mr. Collins upon their back?

A. Some of them do. In a majority of cases, they are not endorsed by Mr. Collins.

Q. I wish you would state Mr. Dawes just how the several
138 amounts of these interest payments were figured? How did the bank arrive at the amounts of these several payments?

A. Interest was paid at the rate of three percent per annum under a flexible arrangement allowing for fluctuation in the account, subject to a fixed deduction of $1,000.00 per day.

Mr. Caldwell: We offer Exhibit "F" in evidence.

(Said Exhibit "F" *are* as follows:)

EXHIBIT "F".

C. B. Collins, State Treasurer.

Account opened Mar. 28,	1903	$72,646.77
Mar. 31,	"	176,094.21
Apr. 30,	"	200,812.44
May 30,	"	200,812.44
June 30,	"	50,812.44
July 31,	"	21,083.92
Aug. 31,	"	23,954.17
Sept. 30,	"	80,052.23
Oct. 31,	"	62,788.36
Nov. 30,	"	39,656.70
Dec. 31,	"	24,389.07
Jan. 30,	1904	82,263.39
Feb. 29,	"	16,862.84
Mar. 31,	"	449,786.59
Apr. 30,	"	318,479.11
May 31,	"	258,473.40

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June 30,	1904	$165,054.20
July 31,	"	46,161.61
Aug. 31,	"	54,890.60
Sept. 30,	"	124,646.91
Oct. 31,	"	134,620.24
Nov. 30,	"	133,077.05
Dec. 31,	"	312,849.55
Jan. 31,	1905	76,175.17
Feb. 28,	"	95,286.69
Mar. 31,	"	362,490.92
Apr. 29,	"	423,927.54
May 31,	"	476,606.12
June 30,	"	452,558.39
July 31,	"	327,279.70

Aug. 31,	"	324,819.33
Sept. 30,	"	482,402.97
Oct. 31,	"	378,338.97
Nov. 29,	"	391,597.29
Dec. 30,	"	471,403.05
Jan. 31,	1906	211,988.85
Feb. 28,	"	214,437.70
Mar. 31,	"	358,836.56
Apr. 30,	"	419,588.50
May 31,	"	436,207.10
June 30	"	277,651.06
July 31,	"	84,510.51
Aug. 31,	"	95,286.11
Sept. 29	"	215,162.36
Oct. 31,	"	174,799.73
Nov. 30	"	170,976.41
Dec. 31,	"	252,271.82

Account closed January 4, 1907 (Check 252,271.82)

140 MITCHELL, S. D., Jan. 15, 1918.

E. R. Winans, Esq., of Sioux Falls, South Dakota, appearing for the plaintiff, and there being no appearance on the part of the defendant.

E. H. MILLEN,

being called as a witness on the part of the State of South Dakota, was first duly sworn to testify the truth, the whole truth and nothing but the truth and testified as follows:

Direct examination.

By Mr. Winans:

Q. What is your name?

A. E. H. Millen.

Q. What official position, if any, do you hold in connection with the First National Bank of Mitchell, South Dakota?

A. Cashier.

Q. How long have you held such position?

A. Ten months.

Q. Has the First National Bank of Mitchell, South Dakota, continued under the same charter since the year 1903, to the present time?

A. Yes sir.

Q. As cashier of this institution, have you the book of accounts that have been kept in connection with this business since the year 1903, under your custody and control?

A. They are, yes sir.

Q. Have you made an examination of such books of accounts to

ascertain whether or not C. B. Collins former State Treasurer of the State of South Dakota, ever carried an account in this bank.

111 A. Yes, sir.

Q. From such examination, what did you ascertain the facts to be?

A. From our records, we find he had received interest as follows:
March 9, 1905, Paid $250.00 interest.
January 11, 1906, Paid $300.00 interest.
January 12, 1907, Paid $294.10 interest.

Q. The payments of $250.00 first mentioned, would be the interest on what amount of money and for what period of time?

A. $10,000.00 for ten months at three per cent.

Q. And the item of $300.00 above mentioned?

A. It would be $10,000.00 for one year at three percent.

Q. And the item of $294.10?

A. It was the interest on $10,000.00 for eleven months and thirteen days at three percent on $10,000.00.

Q. To whom do your records show these several payments of interest were made?

A. C. B. Collins.

Q. In what name was this account carried during the year above mentioned?

A. C. B. Collins, State Treasurer.

Q. And were the several payments of interest so made to him?

A. They were.

Witness excused.

112 PIERRE, S. D., Jan. 17, 1918.
1:30 P. M.

The plaintiff appearing by Byron S. Payne and there being no appearance on the part of the defendant.

JAMES R. MCKNIGHT,

being called as a witness on the part of the State of South Dakota was first duly sworn to testify the truth, the whole truth and nothing but the truth and testified as follows:

Direct examination.

By Mr. Payne:

Q. You may state your name and place of residence.
A. James R. McKnight, Pierre, S. D.
Q. What is your business at the present time?
A. Banking.
Q. With what bank are you connected?
A. With the Pierre National Bank of Pierre, S. D.

Q. What official position, if any, do you hold in that bank?

A. Cashier.

Q. And how long have you served such bank as its cashier?

A. I could not say as to exactly how long a time without looking it up, but in the neighborhood of 10 or 12 years, I think. I think 10 years in the neighborhood of 10 years, I think.

Q. And how long have you been connected with the Pierre National Bank?

A. I first entered the employment of the Pierre National
143 Bank in August 1905, and have been with it continuously since then.

Q. In what capacity did you serve in the bank before you became its cashier?

A. Bookkeeper and assistant cashier.

Q. Does the bank have books of account showing the deposits of moneys made in the bank during the years, from the beginning of 1903 to the end of the year 1906?

A. It has.

Q. And those books are still in the possession of the bank?

A. They are.

Q. Have you examined the books of the bank for the years 1903, to 1906 inclusive, and ascertained whether or not the defendant herein, Charles B. Collins, deposited as State Treasurer, money of the State in the Pierre National Bank?

A. I have.

Q. And what *is* the facts with reference to him having made such deposits during this period?

A. I do not understand your question.

Q. Did he, or did he not, have such deposits in the Pierre National Bank?

A. He did.

Q. And did he have deposits of state funds in his name as state treasurer during all of this period?

A. I think so, practically all of the time.

Q. Have you examined the books of the bank and ascertained whether or not the said Pierre National Bank paid any interest upon the deposit of funds made by the said Collins as state treasurer.

144 A. I have.

Q. And you may state what is the fact whether the said bank did or did not pay interest on such deposits of funds?

A. It did.

Q. And can you state the amount of interest so paid by the said Pierre National Bank upon the deposits of the defendant, as State treasurer, during the period beginning with January 1903, up to and including the year 1906? If so, you may go ahead and make a statement to the record of the amount and the dates when such interest payments were made.

A. In August 1903, I made up a statement as disclosed by the books of the Pierre National Bank of Interest payments made on

state deposits held by this bank, during the years 1903, 1904, 1905 and 1906 and according to the statements, and as I found the payments to have been made, they are as follows:

1903.

Jan. 31,	$72.35
Mar. 2,	72.35
Apr. 1,	66.26
May 5,	72.36
Jun. 2,	71.03
June 30,	73.20
Aug. 1,	19.65
Oct. 2,	4.28
Nov. 5,	14.70
Dec. 2,	14.47
Dec. 29,	14.70
	$495.35

145 1904.

Jan. 29,	$13.28
Feb. 29,	14.41
Mar. 31,	20.72
April 28,	27.52
Jun. 1,	25.10
Jun. 29,	23.64
July 29,	17.68
Sept. 3,	16.00
Sept. 30,	19.00
Nov. 30,	22.42
	$199.77

1905.

Jan. 1,	23.33
Jan. 31,	25.29
Mar. 2,	25.00
Apr. 2,	23.33
May 1,	25.48
May 29,	25.00
June 29,	25.48
July 31,	25.00
Aug. 29,	25.48
Oct. 2,	25.48
Nov. 2,	25.00
Dec. 1,	25.83
Dec. 30,	25.00
	$324.70

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1906.

Jan. 30,	25.83
Mar. 1,	25.83
Mar. 30,	23.33

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Apr. 30,	$25.83
May 29,	25.00
Jun. 30,	25.83
July 31,	25.00
Aug. 29,	25.83
Sept. 29,	25.83
Oct. 29,	25.00
Nov. 30,	25.83
Dec. 29,	25.00
	$304.11

Q. This statement that you say that you made up, was made up from the books and records of your bank?

A. It was.

Q. And is it correct, as shown by the books and records of the bank?

A. I think so.

Q. And the statement as you have given it to the record here today, is included within the statement made at that time?

A. It is.

Q. Mr. McKnight, do you know how these interest payments were made? Were they made in cash?

A. I think they were made by drafts. They were made by drafts.

Q. And do you know what was done with the drafts?

A. They were either mailed to Mr. Collins or to some bank designated by him to receive it. I want to change that. They were either mailed to the state treasurer or some bank designated by him to receive them.

Q. Were these drafts by which you say payments were
146½ made, drafts of your bank?

A. Yes, sir.

Q. And do you know on what bank they were drawn?

A. I do not recollect. We had several correspondents, and we were accustomed to draw drafts on the banks where our funds are the largest.

Q. The original drafts, what became of them?

A. They are with our records. The original drafts.

Q. They returned to you after they were paid, and are now kept among the records of the bank, is that right?

A. Yes, sir; that is correct.

Witness excused.

147 HARRY C. QUAKENBUSH being called as a witness on the part of the State of South Dakota, was first duly sworn to

testify the truth, the whole truth and nothing but the truth, and testified as follows:

Direct examination.

By Mr. Payne:

Q. State your name and place of residence.
A. Harry C. Quakenbush, Pierre, S. D.
Q. What is your business?
A. Bank cashier.
Q. And with what bank are you connected?
A. The National Bank of Commerce of Pierre, S. D.
Q. How long have you been connected with that bank?
A. Nearly 8 years, in various capacities.
Q. How long have you been cashier?
A. About 6 years.
Q. And prior to that, in what capacity did you serve the bank?
A. As teller, bookkeeper and general clerk.
Q. Does the National Bank of Commerce of Pierre have books of accounts that show the transactions of the bank for the years 1903 to 1906, inclusive?
A. They do.
Q. The bank of course, was engaged in the banking business at that time?
A. It was.
Q. And do these books of account show the deposit of
148 funds or money made in the bank during the period referred to?
A. They do.
Q. Have you examined the books of account of your bank, beginning with the year 1903 up to and including the year 1906, and ascertained whether or not Charles B. Collins, the defendant herein, as State Treasurer, had a deposit or deposits of state funds in your bank during this period?
A. I have examined the records for that purpose and found that during most of that time, if not all of it, the said Charles B. Collins had an account with the National Bank of Commerce, as State Treasurer.
Q. That was a deposit of money or funds, as State Treasurer?
A. As I remember it, that is the way the account stood.
Q. Have you examined the books for the period, including the years 1903 to 1906, inclusive, and ascertained whether or not the National Bank of Commerce of Pierre paid interest upon the deposits of said Charles B. Collins, as State Treasurer, had in your bank at that time?
A. I have examined the books and found, to all appearances, interest had been paid on daily balances of this account.
Q. Have you ascertained the particular sums that the bank paid on the deposits to Mr. Collins, as State Treasurer, together with the dates or approximate dates of such payments? If so, you may read

to the record the amount paid as interest and the date when the same was paid?

A. 1903 interest, on an average daily balance of approximately $16,000.00. I find in the regular interest account, the debit
149 interest accounts, the following items which appear to have been paid to Mr. Collins. They were generally marked "St. Tr." which I took to mean "State Treasurer." I do not remember finding any cashier's checks or drafts covering this interest. The following are the amounts:

1903.

Dec. 3	$201.25
Mar. 3	130.00
Apr. 2	87.50
May 6	94.00
June 30	187.00
Aug. 27	22.82
	$722.57

1904.

Interest on an average daily balance of approximately $14,000.00.

Dec. 24	82.50
June 1	117.55
Aug. 29	98.75
	$298.60

1905.

Interest on an average daily balance of approximately $15,000.00.

Jan. 5	$180.00
Feb. 15	45.00
Mar. 28	37.50
June 2	112.50
Aug. 4	75.00
Nov. 7	112.50
	$562.50

1906.

Interest on an average daily balance of approximately $15,000.00.

150 Jan. 10	$75.00
Mar. 26	112.50
June 14	75.00
Dec.	156.25
	$418.75

Q. These amounts that you have given, as I understand are the amounts as shown by the books of the bank, that were paid to Mr. Collins, as State Treasurer?

A. As far as I could learn from the records, that is the case.

Q. And they were paid as interest upon the account which he had in your bank during the period, including the year 1903 to 1906, inclusive, as a deposit as State Treasurer?

A. I presume that is the case.

Q. Is that the case as indicated and shown by the books of the bank?

A. Yes, sir.

Q. And what is your testimony as to how you found these payments to have been made, as shown by the books of the bank?

A. I found no method of payment, no drafts, cashier's checks, or certificates issued to Mr. Collins. In most of these cases where there was any interest charged in the interest account, it is marked "St. Tr."

Q. And was that a cash transaction, as appears by the books of the bank?

A. It would appear from the books, it was a cash transaction.

151 Q. And what do you understand regarding "St. Tr." indicates, or what does it mean?

A. State Treasurer.

Witness excused.

DEADWOOD, S. D., Feb. 9, 1918, 4 p. m.

Byron S. Payne, appearing for the plaintiff, the State of South Dakota, and there being no appearance on the part of the defendant:

A. A. COBURN being called as a witness on the part of the plaintiff was first duly sworn to testify the truth, the whole truth, and nothing but the truth, and testified as follows:

Examination.

By Mr. Payne:

Q. You may state your name and place of residence?

A. A. A. Coburn, Deadwood, South Dakota.

Q. Are you associated with the First National Bank of Deadwood, South Dakota, in any manner?

A. I am.

Q. In what way?

A. Assistant Cashier.

Q. How long have you been connected with that bank?

A. Since October, 1906.

Q. Are you acquainted with the books of account and records of the First National Bank of Deadwood?

A. Yes, sir.

Q. And have you made an examination of the bank which
152 relate- to the payment of interest upon deposit accounts?

A. I have.

Q. The bank has a record has it, of the interest the bank paid upon deposit accounts from the period beginning August 1, 1905, and ending December 31, 1906?

A. It has.

Q. What is the fact as to whether or not C. B. Collins, as State Treasurer, during the period I have mentioned, had a deposit of money as State Treasurer, in your bank?

A. He had.

Q. What is the fact as to whether or not the First National Bank of Deadwood paid interest, upon the account of Mr. Collins, as State Treasurer, during that period?

A. It did.

Q. And do the books and records of the bank show the amount of interest that was paid to Mr. Collins upon his account, as State Treasurer, during that period?

A. They do.

Q. Have you made an examination of those books to ascertain the amount of interest that was paid Mr. Collins on the State Treasurer's account?

A. I have.

Q. Will you state to the record, the amount of interest the First National Bank of Deadwood paid Mr. Collins, upon his account as State Treasurer, giving the date, or approximate date, of such payment, and the amount paid?

A.

Aug. 31, 1905,	$42.47
Oct. 31, 1905,	41.67

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Dec. 21, 1905,	$41.67
Jan. 8, 1906,	42.27
Jan. 2, 1906,	41.67
Mar. 6, 1906,	41.67
Apr. 4, 1906,	41.67
May 1, 1906,	41.67
June 1, 1906,	41.67
July 1, 1906,	41.67
Aug. 6, 1906,	41.67
July 3, 1906,	6.67
Sept. 14, 1906,	43.17
Oct. 4, 1906,	41.67
Nov. 8, 1906,	41.67
Dec. 6, 1906,	41.67
Jan. 10, 1907,	41.67
Total	676.29

Q. This interest payment of $41.67, made on January 10, 1907, was interest upon the deposit of Mr. Collins as State Treasurer, for what period?

A. For the month of December.

Q. Of the preceding year?

A. Of the preceding year, yes, sir.

Q. State, if you know, how this interest was paid to Mr. Collins?

A. It was paid by First National Bank of Deadwood drafts, payable to teller and endorsed by him over to C. B. Collins.

Q. And were these drafts for interest subsequently returned to the First National Bank of Deadwood?

A. Yes, sir. The Drafts were returned. They were paid by our bank and returned as cancelled vouchers.

154 Q. They were returned in the due course of business?

A. Yes sir.

Q. These drafts, as I understand you, were made payable to your teller, and your teller endorsed them over, payable to the order of C. B. Collins?

A. They were made payable to our teller, and endorsed "payable to the order of C. B. Collins. A. W. Trimible".

Q. Those drafts, when they were returned to your bank as paid, were they endorsed by Mr. Collins?

A. Yes, sir.

Witness excused.

155 The Honorable the Judge of the Supreme Court of the United States:

I, William Wallace, duly appointed, qualified and acting Referee in the within entitled action, respectfully report as follows:

1. That each of said witnesses named in the annexed were before testifying, duly sworn to testify the truth, the whole truth and nothing but the truth.

2. That it was stipulated by and between the parties to the within entitled action that the testimony in said action might be taken in shorthand by William Wallace (Referee) and thereafter transcribed by said Wallace, and the signing of the same by the respective witnesses was waived, and that said testimony when so taken and transcribed might be used by either party with the same force and effect as though the same had been signed by the witnesses, which said stipulation was signed in my presence, and all of which more fully appears by said stipulation, which is hereto attached and made a part of this report.

3. That the testimony given by the respective witnesses was taken down by myself in shorthand and thereafter transcribed by myself, and the testimony hereto attached is a true and correct statement and transcript of the testimony given by the respective witnesses sworn in said action.

All of which is respectfully submitted:

WILLIAM WALLACE,
Referee.

156 In the Supreme Court of the United States.

STATE OF SOUTH DAKOTA, Plaintiff,

vs.

C. B. COLLINS, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between C. C. Caldwell, Attorney General of the State of South Dakota, representing the Plaintiff in the above entitled action and C. B. Collins, the Defendant, that the testimony in the above entitled action may be taken in shorthand by William Wallace, Referee, and thereafter transcribed by said Wallace and the signing of the same by the respective witnesses is hereby waived, and the said testimony when so taken and transcribed may be used by either party with the same force and effect as though the same had been signed by the witnesses.

C. C. CALDWELL,
Attorney for Plaintiff.
C. B. COLLINS,
Defendant.

[Endorsed:] Supreme Court, U. S. Term No. 10, Orig'l. State of South Dakota, Complainant, vs. Charles B. Collins, Testimony. Filed September 30, 1918.

157 In the Supreme Court of the United States, October Term, 1916.

No. 14, Original.

STATE OF SOUTH DAKOTA, Plaintiff,

vs.

CHARLES B. COLLINS, Defendant.

Report of Referee.

To the Honorable Judges of Said Court:

William Wallace, the Referee appointed by order of Court, entered on the 12th day of March, 1917, appointing him as Referee to take and report the evidence on the part of the plaintiff and defendant in said suit, with authority to administer oaths, make findings and recommendations, respectfully submits the following report:

The defendant was duly summoned by the process of this Court, to appear before the Referee at Seattle, Washington, November 5,

1917, for examination under oath, touching the allegations of the bill of complaint; the plaintiff appeared by Mr. Clarence C. Caldwell, Attorney General of the State of South Dakota, and the defendant appeared in person but without counsel.

Upon being interrogated with reference to the receipt of interest on the moneys of the plaintiff while Treasurer of said State, from the various depositories in which he caused such moneys to be kept during his term of office as Treasurer of plaintiff, including the years, 1903, 1904, 1905 and 1906, the defendant declined to answer, giving as his reasons therefor, the following:

158 "In view of the fact that there has never been any court decision handed down in South Dakota, covering this question, and inasmuch as there has been opinions from eminent jurists in other states covering the same question, and especially from Colorado where the laws of the State of South Dakota were copies from almost word for word, as cited by the late John L. Pyle, at one time Attorney General of the State, paragraphs of this opinion from Mr. Pyle, if I am permitted, I will include in the hearing, or will submit it as a whole. I decline to answer this question for those reasons." (Transcript page 62.)

Thereupon Mr. Caldwell, as Attorney General of the State of South Dakota, stated to and in the presence of the defendant that:

"In view of the reasons that he has given for not answering the questions, that any crimes that Mr. Collins is guilty of for the wrongful receiving or retaining of interest on the public funds while State Treasurer of South Dakota, have not been unlawful for the reason that criminal prosecutions for all such offenses must be brought within three years after the offense has been committed." (Transcript page 69.)

The witness was repeatedly ordered by the Referee to make answers to the questions propounded to him and refused to answer. (Transcript pages 66, to 86 inclusive.)

The opinion of Attorney General Pyle of the State of South Dakota was marked Exhibit "1" and offered in evidence in

159 behalf of the defendant and is reported at page 87 of the Transcript.

At the examination of the defendant at Seattle, Washington, November 5th, 1917, a stipulation was entered into between the Attorney General on behalf of the plaintiff, and the defendant, in and by which the defendant waived notice of the taking of further testimony by the plaintiff, and authorizing the plaintiff to take the evidence of such other witnesses as it might desire, in support of the allegations of the complaint, without notice to the defendant and also waiving the signing of the testimony of such witnesses.

Thereafter the plaintiff proceeded to take evidence of the officers of the several depositories in which the public funds were kept by the defendant during his said term of office, a correct report of which is contained in the transcript filed herein at pages 110 to 163.

Findings of Fact.

From the evidence so taken, the Referee finds:

I.

That the defendant served as treasurer of the State of South Dakota from January 6th 1903 until January 1st, 1907; that during said term he deposited the public moneys of the State of South Dakota in the following banks, among others, namely: Illinois Trust and Savings Bank of Chicago, Illinois; Central Trust Company of Chicago, Illinois; First National Bank of Mitchell, South Dakota; Pierre National Bank of Pierre, South Dakota; National Bank of Commerce of Pierre, South Dakota, and First National Bank of Deadwood, South Dakota.

II

160 In the month of January, 1903, the defendant as State Treasurer and Ex-officio Treasurer of the Regents of Education of South Dakota, opened an account with the Illinois Trust and Savings Bank of Chicago, Illinois, under an agreement with the officers of said bank to pay him interest at the rate of two per-cent per annum on all average daily balances in excess of One thousand dollars; that the defendant deposited moneys of the State of South Dakota in said bank in pursuance of said agreement, from time to time thereafter during his said term of office for the years 1903, 1904, 1905 and 1906, and that the said bank paid the defendant as interest on said daily balances, under said agreement for said years, the following amounts:

1903	$1,729.00
1904	2,043.42
1905	817.28
1906	1,399.10
Total	$5,988.80

III.

That on or about March 28th, 1903, the defendant as Treasurer of the State of South Dakota, pursuant to an agreement between said defendant and the Central Trust Company of Chicago, Illinois, opened an account with said bank under an agreement with the officers of said bank to pay him interest at the rate of three per cent per annum on average daily balances, in excess of One thousand dollars; that in pursuance of said agreement said Central Trust Company made monthly payments of interest on moneys of the State of South Dakota so deposited by the defendant in said bank between the months of April 1903, and January 1907, inclusive, amounting to $22,987.70.

161

IV.

That during his said term of office and between January 1903 and the expiration of his second term of office, January, 1907, the defendant deposited various sums of money belonging to the State of South Dakota, as State Treasurer in the First National Bank of Mitchell, South Dakota, and said bank paid to the defendant as interest on the moneys of the state so deposited by him, sums as follows:

March 9, 1905	$250.00
January 11, 1906	300.00
January 12, 1907	294.10
Total	$844.10

V.

That during the years 1903, 1904, 1905, and 1906, the defendant as State Treasurer deposited moneys of the plaintiff from time to time in the Pierre National Bank of Pierre, South Dakota, and said bank paid the defendant as interest on said moneys so deposited during the several months of each year, as follows:

1903	$495.35
1904	199.77
1905	324.70
1906	304.14
	$1323.96

VI.

That during said term as State Treasurer, the defendant deposited moneys of the State of South Dakota, in the National Bank of Commerce of Pierre, South Dakota, from time to time, that said bank paid defendant as interest on average daily balances of ap-
162 proximately sixteen thousand dollars, during his said term of office as follows:

1903,	$722.57
1904,	298.60
1905,	562.50
1906,	418.75
	$2002.42

VII.

That during said term of office the defendant, as State Treasurer, beginning August 1st, 1905, and ending December 31st, 1906, carried an account and from time to time made deposits of money of the plaintiff in the First National Bank of Deadwood, South Dakota, and at various times between August 1st, 1905, and January

10, 1907, inclusive, said bank paid the defendant as interest on the moneys of the State so deposited by him in said bank the sum of $676.29.

VIII.

That between January 1st, 1903, and January 10th 1907, there was paid to the defendant as interest upon the moneys of the State of South Dakota, which was received by him as Treasurer of said State, and paid to him on deposits in the several banks above named, interest amounting to $32,094.27; that said sum was received by the defendant as interest upon the public moneys of the State of South Dakota deposited by him as such State Treasurer in said banks in excess of his salary and all other sums due him from said State as State Treasurer, and that the same was received and retained by him and he rendered no account thereof to the plaintiff nor any of its officers and paid no part of the same to the plaintiff or any of
163 its officers, and that the said defendant appropriated the said sum to his own use.

Conclusions.

From the facts hereinbefore found, I recommend that judgment be entered in favor of the plaintiff and against the defendant for the sum of $32,094.27 with interest thereon at the rate of seven per cent per annum from January 1st, 1907, and for the plaintiff's costs and disbursements of this suit.

Dated at Aberdeen, South Dakota, this 9th day of May, A. D. 1918.

WILLIAM WALLACE,
Referee.

164 Supreme Court of the United States.

No. 11, Original.

THE STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS.

The President of the United States to Charles B. Collins, 404 Amer. Bank Bldg., Greeting:

You are hereby commanded to appear as witness before William Wallace, Special Commissioner, at the U. S. Marshal's Office, in the City of Seattle, Washington, on the 5 day of November, 1917, at 2 o'clock p. m. and not depart without leave.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 14th day of September, A. D. 1917.

[SEAL.] JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed subpœna on the herein named Charles B. Collins by handing to and leaving a true and correct copy thereof with Charles B. Collins, personally at Seattle, Washington, in said District on the 25th day of Oc-
165 tober, A. D. 1917.

JOHN M. BOYLE,
U. S. Marshal.
By MORTON D. WAINWRIGHT,
Deputy.

Marshal's fees 62 cents.

In the Supreme Court of the United States.

STATE OF SOUTH DAKOTA, Complainant,

vs.

CHARLES B. COLLINS, Defendant.

Stipulation.

It is hereby stipulated by and between the above named Complainant through its Attorney General, and the above named Defendant personally, that said Complainant may, if it desires, without any notice whatsoever to the defendant take the testimony of any of the present or former officers or employes of any of the following named banks and banking institutions, to-wit: National Bank of Commerce of Pierre, South Dakota; First National Bank of Deadwood, South Dakota; Pierre National Bank of Pierre, South Dakota; Central Trust Co. of Illinois, of Chicago, Illinois; First National Bank of Mitchell, South Dakota, and the Illinois Trust and Savings Bank, of Chicago, Illinois; also the testimony of any of the present or former officers or employes of any bank or banking institution with which the defendant kept any of the public moneys of South Dakota, when he was Treasurer of said State; also the testimony of the executive accountant of South Dakota, the present or any
166 former State Treasurer of South Dakota, or any present or former Deputy State Treasurer, or clerk or employee now or heretofore in the office of the State Treasurer of South Dakota, also testimony of the present or any former Governor of South Dakota, or Secretary or employee, now or heretofore in the Governor's office of said State; also the testimony of the present or any former State Auditor, Deputy State Auditor, or clerk or employee in the State Auditor's office of said State; the defendant herein expressly waiving all notice of the time and place of the taking of such testimony, and hereby agreeing that the testimony so taken, or any part thereof,

may be used in this proceeding with the same force and effect as if notice of the taking of such testimony were duly given.

Dated at Seattle, Washington, this 6th day of November, 1917, and signed in duplicate.

C. C. CALDWELL,
Attorney General for Complainant.

P. O. Address—Sioux Falls, South Dakota.

C. B. COLLINS,
Defendant.

P. O. Address—404 American Bank Bldg., Seattle, Washington.

(Endorsed:) Supreme Court U. S., October Term, 1918. Term No. 10, Orig'l. State of South Dakota, Complainant, vs. Charles B. Collins. Report of Referee. Filed September 30, 1918.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1916

THE STATE OF SOUTH DAKOTA,
Plaintiff,

vs.

CHARLES B. COLLINS,
Defendant.

MOTION TO SET CASE FOR TRIAL

Comes now the plaintiff herein and moves the Court to set this case for final argument and trial and formal judgment at the earliest date after January 15, 1919, as will suit the convenience of the Court. This motion is based upon the Transcript of Record herein, which contains among other things a full report of the Referee heretofore appointed, and a recommendation for judgment against the defendant.

Dated this 2nd day of December, 1918.

CLARENCE C. CALDWELL,
Attorney General of South Dakota,

EDWARD E. WAGNER,
SAMUEL HERRICK,
Solicitors for Plaintiff.

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FILED
FEB 12 1919
JAMES D. MAHER,
CLERK.

BRIEF OF COMPLAINANT

Supreme Court of the United States

OCTOBER TERM, 1918

No. 10, Original

THE STATE OF SOUTH DAKOTA, COMPLAINANT,

vs.

CHARLES B. COLLINS.

IN EQUITY.

CLARENCE C. CALDWELL,
EDWARD W. WAGNER,
Attorneys for Complainant.

Supreme Court of the United States

OCTOBER TERM, 1918

No. 10, Original

THE STATE OF SOUTH DAKOTA, COMPLAINANT,

vs.

CHARLES B. COLLINS.

IN EQUITY.

STATEMENT OF FACTS.

This in an original suit brought in this Court by the State of South Dakota against the defendant, a non-resident of the state, for an accounting. It is charged in the Bill of Complaint that the defendant was State Treasurer of the State of South Dakota for four years, beginning on the sixth day of January, 1903, and that during his incumbency of such office that he received and collected large sums of money as interest upon the public funds, which the defendant wrongfully withheld from the plaintiff, and refused to account for to the plaintiff. The only answer or other pleading submitted by the defendant appears at page 35 of the Transcript of Record, and is as follows:

> "I hereby deny the allegation as set forth in the complaint and plead not guilty to the charge of misappropriating, withholding or converting to my personal use any money belonging to the State of South Dakota during my term of office."

Upon plaintiff's motion, William Wallace, Esq., was duly appointed as Referee herein to take and report the evidence to the Court, and to make findings and recommendations. The evidence taken by the said Referee appears at pages 38 to 97 of the Transcript. At page 98 of the Transcript appears a stipulation in which both parties waive the signing of the testimony, and at page 103 appears a further stipulation wherein the defendant agreed that the testimony of certain witnesses might be taken without notice to him, the defendant expressly waiving such notice.

Upon the evidence submitted to the Referee, the Referee found that between January 1, 1903, and January 10th, 1907, the defendant collected interest upon the public funds of the plaintiff in the sum of $32,094.27, and that the defendant rendered no account thereof to the plaintiff, but appropriated the whole of said sum to his own use. (Tr. of R. p. 102). Upon this and the other findings of the Referee, the Referee recommended that judgment be given in favor of the plaintiff and against the defendant for the said sum of $32,094.27, with interest thereon at 7 per cent per annum from January 1st, 1907, besides costs. (Tr. of R. p. 102).

FIRST POINT.

THE FINDINGS OF THE REFEREE ARE SUPPORTED BY THE EVIDENCE.

The testimony of the defendant himself was taken and he admitted being State Treasurer of South Dakota, for four years, beginning in January, 1903, (Tr. of R. p. 39). This also appears from the defendant's official bonds appearing at pages 41 to 61 of the Transcript.

In answer to the questions as to whether defendant had received any interest upon the public funds while he was State Treasurer, the defendant repeatedly refused to answer for various reasons assigned at pages 62 to 71 of the Transcript. The defendant expressly stated that he never made any report to the Governor of South Dakota, or any other official of any moneys which he received as interest upon the public funds, and that he did not keep any public account of such interest. (Tr. of R. p. 70.)

According to the testimony of the Cashier of the Illinois Trust & Savings Bank, that institution paid the defendant, as interest upon state money while the defendant was State Treasurer, sums aggregating $4,259.80. (Tr. of R. p. 81). Exhibit "C" prepared from the books of said bank by the Cashier, shows the items making up this sum. (Tr. of R. pp. 82-83). Defendant admits that he kept state funds in this bank. (Tr. of R. p. 62). And when the defendant was asked if it was not a fact that he had received $4,259.87 from this bank as interest upon the state funds, he declined to answer. (Tr. of R. p. 69).

It appears from the testimony of the Vice-President and Cashier of the Central Trust Company that that institution paid the defendant, as interest upon the state funds, as shown by the books of the institution, the sum of $22,887.70. (Tr. of R. p. 86). The defendant was asked if it was not a fact that the Central Trust Company paid him this amount as interest upon the state funds while he was State Treasurer, and he declined to answer the question. (Tr. of R. p. 69).

The Cashier of the First National Bank of Mitchell, South Dakota, testified that that institution paid to the defendant, as interest upon the state funds, sums aggregating $844.10. (Tr. of R. p. 89). The defendant was asked if he did not receive this sum of money from the First National Bank of Mitchell as interest upon state funds, and he declined to answer the question. (Tr. of R. p. 70).

The Cashier of the Pierre National Bank of Pierre, South Dakota, testified that it appeared from their books that that bank paid the defendant, as interest on the state funds, sums aggregating $1,322.96. The defendant, when asked if this bank did not pay him $1,322.96 as interest on the state funds when he was State Treasurer, refused to answer the question. (Tr. of R. p. 70).

The Cashier of the National Bank of Commerce of Pierre, South Dakota, testified that it appeared from their books that that bank paid to Mr. Collins, as interest upon the state funds, sums aggregating $1,992.42. The defendant was asked if the National Bank of Commerce of Pierre, South Dakota, did not pay him interest on state funds while he was State Treasurer sums aggregating $1,992.42, and he declined to answer the question. (Tr. of R. p. 69).

The Assistant Cashier of the First National Bank of Deadwood, South Dakota, testified that their books showed that that institution paid the defendant, as interest upon the state funds while the defendant was State Treasurer, sums aggregating $634.62 in 1905 and 1906, and the sum of $41.67 in 1907. The defendant, when asked if the First National Bank did not pay the sum of $634.62 as interest on the state funds in 1905 and 1906, refused to answer the question. (Tr. of R. p. 69).

Thus it appears that the defendant failed to furnish any

testimony whatever upon the real question at issue, and when he was given an opportunity to affirm or deny the charge that he had collected interest, merely declined to answer the questions propounded. The Referee accordingly accepted the statements of the bankers made from the books of the banks and found that the defendant had been paid, as interest upon the state funds, the several sums shown by the books of the several banks.

Upon this evidence we respectfully submit that the Referee was justified in his Findings of Fact.

SECOND POINT.

THE STATE IS ENTITLED AS A MATTER OF LAW TO THE INTEREST COLLECTED BY THE DEFENDANT.

In support of this proposition we refer to several provisions of the Constitution and Statutes of the State of South Dakota. The office of State Treasurer is created by Sections 12 and 13 of Article XIV of the State Constitution. Said Section 13 reads as follows:

> "The powers and duties of the Secretary of State, of the State Auditor and Treasurer, Superintendent of Public Instruction, Commissioner of School and Public Lands and Attorney General shall be as prescribed by law."

The salary of the State Treasurer is definitely fixed by Section 2 of Article XXI of the Constitution at $1,800 per year, and this same section provides that,

> "Neither the Treasurer nor any of the other officers therein named shall receive any fees or perquisites whatever for the performance of any duties connected with his office. It shall not be competent for the legislature to increase the salaries of the officers named in this Article, except as herein provided."

Section 11 of Article XI of the Constitution declares that,

> "The making of profit directly or indirectly out of state, county, city, town or district school money, or

using the same for any purpose not authorized by law shall be deemed a felony and shall be punished as provided by law."

Section 95 of the Revised Political Code of 1903 is as follows:

"He (referring to the State Treasurer) shall in no case purchase or receive any warrant redeemable at the treasury, or any audited account at a less value than is expressed therein; *nor shall he receive any fee or reward, aside from his annual salary, for transacting any business connected with the duties of his office.*"

Section 1788 of the Revised Political Code of 1903 provides that the State Treasurer, among other officers,

"Shall, before entering upon duty, give a bond conditioned that they will faithfully and impartially discharge the duties of their office, naming it fully, and render a true account of all moneys, credits, accounts and property of any kind that shall come into their hands as such officer, and pay over and deliver the same according to law."

Sections 333 and 334 of the Revised Political Code of 1903 are as follows:

"Sec. 333. All moneys belonging to the state, deposited in banks by the state treasurer shall be deposited not to his credit as an individual, but in his name as State Treasurer, and not otherwise."

"Sec. 334. Whenever the State Treasurer shall have money on deposit or an account of public moneys with any bank or banking institution, he shall keep in his office a book known as the 'bank account book,' in which shall be kept a complete and correct account with each bank in which the public moneys are deposited, of all public moneys deposited therein, and that this book shall at all times be open to the inspection of the Governor or any person entitled to know the condition of the public funds."

The sections of the Code following these just quoted con-

tain numerous provisions as to the duties of the State Treasurer in making reports of public moneys deposited in different banks, and the duties and responsibilities of the several banks.

These statutes, we submit, clearly contemplate that the State Treasurer shall deposit the public funds in banks, and that the public funds, though thus deposited, remain the property of the state. Nothing is said in the statutes as to the payment of interest by the depositories. The Constitution, as above quoted, forbids the Treasurer to accept interest for himself, but neither this nor any other provision of our law would preclude the treasurer from contracting for and receiving interest for the state. Since the statutes require the Treasurer to deposit the public money in banks in his name "as State Treasurer," (Sec. 333, Revised Political Code of 1903), and since this is precisely what the defendant did in this case, it is our contention that the funds thus deposited were at all times the property of the state, and that, therefore, any interest that accrued upon these funds was an increment to the fund and became a part of it. In fact these several constitutional and statutory provisions have been considered and construed by the Supreme Court of South Dakota, in the light of the same facts as are here involved, and these matters are, therefore, no longer open to further question. Without further argument, therefore, we merely cite *State vs. Schamber, et al*, decided by the Supreme Court of South Dakota, December 4th, 1917, and reported in 165 Northwestern Reporter at page 241. For the convenience of the Court we quote that decision in full as follows:

> "Defendant, John Schamber, was treasurer of this state for a term of two years, commencing January 12, 1899. As such treasurer he entered into the official bond required by statute, upon which bond the other defendants were sureties. He deposited in various banks, from time to time, the funds in his hands as such treasurer, and it is alleged that he received interest upon such deposits. This action was brought to recover such interest. To the complaint defendants demurred. The demurrer was sustained, and the state appealed.
>
> "(1) While the only question before us is whether the

facts pleaded constitute a cause of action, respondents have argued at length that the facts pleaded do not entitle appellant to equitable relief. The complaint asked for certain equitable relief. Respondents contend that the facts pleaded entitle appellant to legal relief if to any. The question thus raised is not presented by the demurrer. A prayer for relief may often assist in determining the nature of an action, where the nature thereof might otherwise be doubtful; but the sufficiency of the complaint depends, not upon the prayer for relief, but upon the facts pleaded, and, if those facts entitle the plaintiff to any relief either legal or equitable, the complaint is not subject to demurrer upon the ground that the allegations thereof are insufficient to state a cause of action. 16 Ency. Pl. & Pr. 779; 31 Cyc. 110.

"(2) The sole question for our determination is whether or not interest received by a state treasurer for the use of state funds, belongs to the state or whether it belongs to the treasurer. Numerous authorities will be found wherein the right of custodians of public funds to retain interest received by them upon the deposit of such funds in banks has been considered, and the holdings of the Courts are far from uniform. In almost all of the adjudicated cases it will be found that the Courts recognize the fundamental proposition that interest is but an increment and goes with the principal, but there are courts that base their decision upon grounds having no relation to such proposition. Thus, while some Courts have held that such interest money belonged to the custodian because, under the facts of the particular case, the Court found that the title to the principal funds was in the custodian thereof and the relation of debtor and creditor, rather than of trustee and *cestui que* trust, existed between such custodian and the public, other Courts have held that such interest money belonged to the custodian: (1) Because, in the particular case, the Court held that the depositing of the money and the contracting to receive interest thereon was unlawful and held that it was not in the contemplation of either party to the bond that the custodian would make such deposit and receive interest thereon, and hence there was no

liability on the bond for such interest; (2) because, under the facts of the particular case, the Court found that the custodian became an insurer of the funds received by him, and liable, as such, to account therefor, that, because of such liability, the ordinary liability of a trustee to account to his *cestui que* trust for profits made from the trust fund did not exist, and that the relation between the custodian and the public was that of debtor and creditor. See cases cited in notes to Adams v. Williams, 30 L. R. A. (N. S.) 855. An examination of the authorities will reveal that, in some cases where it has been held that a custodian of public funds was entitled to the interest received from such funds and where it has also been held that he was an insurer of such funds, the Courts have placed such right to the interest, not directly upon the ground that the custodian was an insurer of the funds, but upon the ground that, owing to the fact that he was an insurer of such funds, the title thereto vested in him, thus bringing those cases within the line of decisions holding that the increment follows the principal. Such was the holding in Commonwealth v. Godshaw, 92 Ky. 435, 17 S. W. 737, hereinafter referred to.

"Respondents do not contend that the title to the moneys received by the treasurer passed from the state to such treasurer. In fact, it would be most presumptuous, in the light of the various sections of our statutes relating to the public funds of the state—particularly Sections 333-348, Pol. Code—for any one to so contend. We would call particular attention to Section 333, which reads:

> "'All moneys belonging to the state, deposited in banks by the state treasurer, shall be deposited not to his credit as an individual, but in his name as state treasurer, and not otherwise.'

"Neither do respondents contend that the treasurer exceeded his authority either in depositing the state funds in banks or in contracting to receive or in receiving interest upon funds so deposited. It is, therefore, unnecessary for us to determine the soundness of the proposition that, if the interest money was unlawfully received, recovery therefor could not be had on his bond.

"Respondents rely upon two propositions: (1) That the treasurer was an insurer of the funds coming into his hands and therefore not liable, as a trustee, to account for profits arising therefrom; and (2) that the legislature of this state had indicated an intention that the state treasurer should not be held civilly liable for the receipt and retention of such interest money, and the Court should be controlled by such expression of intent. Respondents rely chiefly upon the opinion in the case of State v. Walsen, 17 Colo. 170, 28 Pac. 1119, 15 L. R. A. 457, but also cite the cases of Commonwealth v. Godshaw, supra, and Maloy v. Bernalillo, 10 N. M. 638, 62 Pac. 1106, 52 L. R. A. 126.

"Much discussion will be found in the authorities upon the question as to whether or not a custodian of public funds is an insurer of such funds. That question has been settled in this jurisdiction by the decisions in Clay County v. Simonsen, 1 Dak. 403 (387), 46 N. W. 593, and School District v. Northern Casualty Co., 36 S. D. 392, 155 N. W. 10. It is the settled law of this state that the custodians of public funds are insurers of such funds. But nevertheless we agree with the words of the Court in the case of Adams v. Williams, supra:

> " 'It is a complete *non sequitur* to say that, because Williams was an absolute insurer, therefore the interest belonged to him. The two principles have no relation whatever to each other. Once settled clearly and definitely whose money the principal sum was, and the interest necessarily belongs to that person as an increment to the principal fund, and to argue to the contrary is simply to lose one's self in a methophysical fog of sophistry, failing to give effect to the central principle of right and justice making the interest the property of the party who owned the principal sum.'

"The contention that, merely because one is an insurer of public funds, he ceases to be a trustee thereof and liable as such, but assumes the relation of a debtor, is so completely answered in Adams v. Williams, supra, and in State v. McFetridge, 84 Wis. 473, 54 N. W. 1, 20, L. R. A.

223, that we hesitate to do more than to refer to such decisions.

"But owing to the importance of the question before us, not only to the parties to this action, but to the many custodians of public moneys and their *cestui que* trusts, we feel justified in calling attention to some matters which we believe may assist in making clear the law of this case. A custodian of public funds is held to be an insurer of such funds, not merely because there may be some statute so providing, nor because of the provisions of some bond he may enter into, but, as declared by most of the authorities sustaining such liability, *because to so hold him is in furtherance of a sound public policy.* U. S. v. Prescott, 3 How. 578, 11 L. Ed. 734; Tillinghast v. Merrill, 151 N. Y. 135, 45 N. E. 375, 34 L. R. A. 678, 56 Am. St. Rep. 612; Cameron v. Hicks, 65 W. Va. 484, 64 S. E. 832, 17 Ann. Case. 926. It certainly would be the extreme of inconsistency for the Courts to hold that the custodian's liability as an insurer is based upon public policy and then to hold that, being such insurer of the public funds, such custodian is entitled to all profits received therefrom. It would not be in accord with sound public policy for the public to rest its protection against loss of its funds solely upon the personal responsibility of its custodian and of his bondsmen. Public policy requires, and the law contemplates, that such funds shall remain at all times the funds of the public, so that the funds themselves can be looked to as a security of the public's interests. Anything which would encourage a custodian of public funds to take such funds and loan them out for his own profit would place before such custodian a temptation to deposit the funds in those depositaries that would pay to him the highest rate of interest—would tend to induce him to weigh his chance of personal gain against the chance of loss of the public's money, a thing which public policy could not tolerate.

"But, casting aside all questions of public policy, there still remains neither reason nor sound authority to support the contention that, because a custodian of public

funds is an insurer of such funds, he ceases to be a trustee thereof, but assumes toward the public the relation of debtor. In the Walsen and Malloy cases it is announced as the controlling proposition that:

> " 'The measure of the liability of the officer seems to be the distinction upon which all or nearly all adjudicated cases may be harmonized.'

"The line of reasoning of the Courts which hold as above would seem to be about as follows: The liability of a debtor is absolute. The liability of a trustee or bailee is conditional. Therefore, whenever the liability imposed upon a trustee or bailee is absolute such trustee or bailee becomes a debtor with all the rights of a debtor and freed of all liabilities imposed upon a trustee or bailee. How much more logical to say that a custodian of public funds is a bailee or trustee like any other custodian and burdened with the same duties and liabilities except as such duties and liabilities may be affected by statute or by public policy. But accepting the above line of reasoning, let us see if the liability of a custodian of public funds is the same as that of a debtor. If not, the conclusion reached is without support. In U. S. v. Prescott, supra, the liability of a custodian of public funds was spoken of as absolute, and such was the language of this Court in School Dist. v. Northern Casualty Co., supra. It is apparent from a reading of the Walsen case that the Colorado Court was of the opinion that such liability was absolute. In such opinion there is an implied concession that, if such liability was less than absolute, the relation of debtor would not arise. In U. S. v. Thomas, 15 Wall. 337, 21 L. Ed. 89, the Court refers to the following language used in U. S. v. Prescott, supra:

> " 'The obligation to keep safely the public money is absolute, without any condition, express or implied, and nothing but the payment of it, when required, can discharge the bond.'

—and then says, as we might well say of the language of this Court in School District v. Northern Casualty Co., supra:

"'This broad language would seem to indicate an opinion that the bond made the receiver and his sureties liable at all events, as now contended for by the government. But that case was one in which the defense set up was that the money was stolen, and a much more limited responsibility than that indicated by the above language would have sufficed to render that defense nugatory. And as the money in the hands of a receiver is not his, as he is only custodian of it, it would seem to be going very far to say that his engagement to have it forthcoming was so absolute as to be qualified by no condition whatever, not even a condition implied in law. Suppose an earthquake should swallow up the building and safe containing the money, is there no condition implied in the law by which to exonerate the receiver from responsibility?'

"And the Court in the Thomas case declared that a custodian of public funds could not be holden to account for them when they had been forcibly taken from him by a public enemy. This limitation upon a custodian's liability is quite generally recognized wherever the Court's attention is called thereto. It is even recognized in the Malloy Case though such recognition is inconsistent with the conclusion reached by the Court therein. Among cases wherein this limitation of liability is recognized are: State v. Bobleter, 83 Minn. 479, 86 N. W. 461; Tillinghast v. Merrill, supra; Cameron v. Hicks, supra; and Clay County v. Simonsen, supra, decided by our own Territorial Court. As we stated above, the Colorado Court impliedly conceded that if the liability was limited the relation of debtor and creditor would not arise. Referring to the holding in U. S. v. Mosby, 133 U. S. 273, 10 Sup. Ct. 327, 33 L. Ed. 625, to the effect that interest on the public moneys of the United States belongs to the United States, the Colorado Court says:

"'The way was paved for this decision, however, as early as 1872, in the case of United States v. Thomas, (82 U. S.) 15 Wall. 337 (21 L. Ed. 89), where the Court held that a collector of public money, under bond to keep it safely, and pay it when required, is not

absolutely bound to pay the money, but is excused if prevented from returning it by the act of God or the public enemy, without any neglect or fault on the part of the officer.'

"Is this limitation of liability recognized in the above cases a limitation of a *debtor's* liability or is it a limitation of a *trustee's* or *bailee's* liability? The answer is to be found in the answer to the question of whether the irresistible superhuman cause or the public enemy must need render the custodian financially unable as a debtor to meet the debt or need only remove from him the power to restore the particular fund itself in order to exonerate him from liability. It is clear that the custodian is released from liability for funds in his charge when he is unable to restore the funds themselves because prevented therefrom by such superhuman cause or by the public enemies as in the Thomas Case, and this entirely regardless of whether he would be financially able to respond as a debtor. If he lose the particular fund owing to the workings of some irresistible superhuman cause or the acts of a public enemy he is exonerated of all liability even though he still be possessed of unlimited means to meet a liability; while if he were a debtor and liable as such, the workings of irresistible superhuman causes or the acts of a public enemy would not exonerate him from such liability as a debtor unless it so reduced his wealth as to prevent him from or delay him in meeting such liability. Section 1173, C. C. If such a custodian were a mere debtor to the public no destruction of public funds by any superhuman agency or seizure by any public enemy would release him from his debt unless it left him financially unable to pay the debt and not merely unable to restore the fund.

"As above noted, it is urged in some of the decisions that, because of the fact that the treasurer is an insurer he ceases to be a trustee or bailee and the title to the funds vests in him and that therefore he is entitled to receive the interest therefrom. Certainly it would be illogical to hold a custodian of public funds to be a debtor and still hold that he did not have title to the funds—

one could hardly be debtor for funds, the title of which was in his creditor. In order to complete the circle in which those Courts reason which hold that, because of the extent of the liability of a custodian of public funds, such custodian is a mere debtor, we must also hold him to be the owner of the fund. Then the circle is complete, and starting from any one of the three points, the line of reasoning, no matter which direction you travel, leads you to both of the other points. But if there is a defective link in this circular chain, the whole structure must fall. As noted before, the express wording of our statute prevents us from holding that title to the state's money vested in the treasurer. Even though we had no statutes clearly providing that the title to the funds should remain in the state, yet we may well say with Judge Newman, the trial judge before whom State v. McFetridge, supra, was tried, after holding that the treasurer was an insurer of the funds in his hands, that:

> " 'This makes the responsibility of the custodian of public funds the same as the common law responsibility of the common carrier. * * * It has not been claimed that the common carrier, by reason of his strict responsibility, becomes the owner of the goods he carries.'

"We might add that no one would claim that, because the common carrier is an insurer of the goods instrusted to it, with a liability exactly coextensive with that of a custodian of public funds, it ceased to be a bailee of such goods and became a mere debtor for their value and entitled to all the profits it could make out of the goods.

"(3) But respondents urge another ground why the state treasurer is not liable for this interest. They say:

> " 'The question involved is not what obligations generally arise from the possession of a public office or the custody of public funds. The vital question is simply this: What rule relating to the subject of interest was in force in this state during Mr. Schamber's terms of office?'

"And because of this claim they rely particularly up-

on the case of State v. Walsen, supra. Section 11 Art. XI of our Constitution provides:

> " 'The making of profit, directly or indirectly, out of state, county, city, town or school district money, or using the same for any purpose not authorized by law, shall be deemed a felony and shall be punished as provided by law.'

"Prior to the year 1897 there had been enacted several provisions of our statutes, among them Section 333, P. C., supra, clearly providing that the public funds received by the state treasurer remained the funds of the state—that the title thereof did not pass to the treasurer. Until the year 1897 there was no statute whereby either the state or any municipal division thereof was expressly empowered to recover from its treasurer interest received by such treasurer for the use of public moneys in his custody. In the year 1897 the legislature passed a law providing for the deposit of state funds in depositaries to be selected by the state treasurer, but also providing that nothing contained in such law shall relieve the treasurer or his bondsmen from any liability under which they otherwise would rest. During the same session of the legislature there was enacted a statute which, among other things, enacted as a part of our statutory law the provisions of Section 11, Article XI, supra, rendering them applicable to county treasurers only, and specifically provided that a county treasurer 'shall also be liable under and upon his official bond for the profits realized by such unlawful using of such funds.' It will be seen that the situation, so far as the Constitution and Statute of this state were concerned, existing in 1899, was quite similar to that existing in Colorado and made, by the Court or that state, one of the grounds for its holding in the case of State v. Walsen, supra. Respondents would lead us to believe that in State vs. McFetridge, supra, the Court approved of the holding of the Colorado Court. Not so—it was stated in the McFetridge case that, inasmuch as Wisconsin had no statutes such as those relied upon by the Colorado Court, it was unnecessary for the Court to consider the reasoning of the

Colorado Court in so far as the same was based upon such statutes. Respondents state that:

> "'The legislature intentionally changed the rule making county treasurers absolutely liable for loss of funds without accountability for interest and deliberately declined to make the same change as to the state treasurer.'

"Evidently, in order that we might conclude that the action of the legislature in 1897 was prompted by matters of contemporaneous history, respondents have called our attention to the fact that the Walsen and McFetridge cases had but recently been decided, and that—a fact of which they ask us to take judicial notice—this action of the legislature immediately followed a political campaign wherein 'the taking of interest by state treasurers was a matter of earnest statewide discussion.' If we should draw all the inferences which respondents could ask us to draw from what the legislature did do, as read in the light of matters of concurrent history, we would conclude: That the legislature of 1897 was of the mistaken opinion that the law of this state was that announced in the Walsen case. That such legislature did not desire to change such law except as to county treasurers. That by enacting the law it did enact it supposed it was changing the then existing law to the extent of holding county treasurers liable when otherwise they would not be liable. That, if the legislature had understood that the existing law was as declared in the McFetridge case, it would have, by express statute, so changed the law that all custodians of public funds, other than county treasurers, would have been released from civil liability for interest received by them from such funds. Basing our ruling upon such inferences, respondents would ask us to hold that the law of this state, after 1897, was the law which the legislature of 1897 would have passed if it had known what was then the law. This is asking us to recognize an entirely novel method of enacting legislation, and one we cannot adopt.

"In conclusion, we would call attention to the following controlling facts: The title to all moneys received

by the state treasurer remains in the state under the clear provisions of our statute. While the statute then in force did not provide that the treasurer should deposit money at interest, there was absolutely nothing in such statutes that rendered it unlawful for a state treasurer to deposit moneys in a bank and to contract that the bank should pay interest upon such deposits. It was the state funds that earned this interest and not the treasurer. Such interest became a mere increment of such principal fund, and whenever such increment was paid to the state treasurer it was paid into the state treasury of this state whether in fact it ever reached the office of the state treasurer or was entered in the books of such office. Unless the state treasurer actually misappropriated such interest money, he was guilty of no crime, even though he may have contracted that such interest should be paid to him individually and not to him as state treasurer. The treasurer and also his bondsmen were liable for all funds paid into the treasury and such liability was not affected by the fact that a part of such funds happened to be the earnings or increment of other funds. Moreover, even if it would avail him anything, the law would not allow the treasurer to stultify himself by taking the position that he entered into an unlawful contract with the banks. The law finds that this interest money came lawfully into the possession of the treasurer as public funds. For such public funds lawfully received by the treasurer, he and his bondsmen must account unless released for reasons not appearing in the complaint.

"The order of the Trial Court is reversed."

In view of the foregoing the plaintiff respectfully asks that judgment be ordered in favor of the plaintiff and against the defendant for the sum of $32,094.27, with interest thereon at 7 per cent per annum, the legal rate in South Dakota, from January 1, 1907, to the date of judgment, besides costs.

Respectfully submitted,

CLARENCE C. CALDWELL,

EDWARD E. WAGNER,

Attorneys for Plaintiff.

STATE OF SOUTH DAKOTA *v.* COLLINS.

IN EQUITY.

No. 10, Original. Submitted March 4, 1919.—Decided March 17, 1919.

Under the constitution and laws of South Dakota, interest received by the state treasurer on state funds deposited by him in bank belongs to the State, and the treasurer must account therefor.
Judgment for plaintiff.

THE case is stated in the opinion.

Mr. Clarence C. Caldwell and *Mr. Edward W. Wagner* for plaintiff.

No appearance for defendant.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Suit by the State of South Dakota for an accounting and to recover from defendant interest received by him as treasurer of the State upon moneys of the State deposited by him in various banks.

There is no dispute about the facts, which are detailed at very great length in the bill of complaint.

Collins was treasurer for four years, beginning January, 1903. As such he was entitled to a salary of $1800 a year, and it is provided by the constitution of the State that neither the treasurer nor any other officer of the State shall receive any "fees or perquisites whatever for the performance of any duties connected with their offices." And there are statutory provisions supplementing the constitution, one of which is that "all moneys belonging to the state, deposited in banks by the state treasurer shall be deposited not to his credit as an individual, but in his name as state treasurer, and not otherwise." § 333, Revised Political Code of 1903.

It is alleged that defendant received the sum of $10,000 and more, and it is prayed that he be required to make a full and correct accounting of the moneys received by him and wrongfully withheld from the State.

Defendant answered as follows: "I hereby deny the allegation as set forth in the complaint and plead not guilty to the charge of misappropriating, withholding or converting to my personal use any moneys belonging to the State of South Dakota during my term of office."

On motion of plaintiff a referee was appointed to take the testimony on its part and that of defendant and make findings and recommendations.

On May 9, 1918, the referee made return of his proceedings, with the evidence adduced, from which he concluded as follows:

"That between January 1st, 1903, and January 10th, 1907, there was paid to the defendant as interest upon the moneys of the State of South Dakota, which was received by him as Treasurer of said State, and paid to him on deposits in the several banks above named, interest amounting to $32,094.27; that said sum was received by the defendant as interest upon the public moneys of the State of South Dakota deposited by him as such State Treasurer in said banks in excess of his salary and all other sums due him from said State as State Treasurer, and that the same was received and retained by him and he rendered no account thereof to the plaintiff nor any of its officers, and paid no part of the same to the plaintiff or any of its officers, and that the said defendant appropriated the said sum to his own use." And the referee recommended that judgment be entered in favor of plaintiff and against defendant in the sum of $32,094.27, with interest thereon at the rate of 7% per annum from January 1, 1907, and for plaintiff's costs and disbursements of the suit.

The case was put down for argument and subsequently submitted on brief, the defendant filing none.

Counsel for the State submits quite a long argument to sustain the report, with citation of authorities to establish the liability of defendant. It is not necessary to review them. There is no doubt of defendant's liability. He has not appeared to contend to the contrary, and at the taking of the testimony his defense or extenuation was that he acted upon his faith in a decision of the Supreme Court of Colorado, and, to evade or to withhold aid from any possible criminal prosecution, he declined to answer in regard to transactions concerning the receipt of interest on the public moneys he had deposited in various banks.

Further discussion is unnecessary. The Supreme Court of the State has decided (December 4, 1917), construing

220. Syllabus.

§ 333, *supra*, and other statutory provisions, that in cases like that at bar it is state funds that are deposited and that earn the interest and not the money of the treasurer, and that, therefore, the interest becomes a mere increment of the principal fund and when it is paid to the treasurer it is in effect paid into the state treasury and the treasurer becomes liable for it. *State* v. *Schamber*, 39 S. Dak. 492.

The report of the referee is approved and judgment directed to be entered against defendant in the sum of $32,094.27, with interest thereon at the rate of 7% per annum from January 1, 1907, and for costs and disbursements of the suit.